

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF PUERTO RICO

3 In Re: ) Docket No. 3:17-BK-3283 (LTS)

4 )

5 ) PROMESA Title III

6 The Financial Oversight and )

7 Management Board for )

8 Puerto Rico, ) (Jointly Administered)

9 )

10 *as representative of* )

11 )

12 The Commonwealth of )

13 Puerto Rico, *et al.* ) November 12, 2021

14 )

15 Debtors, )

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16 In Re: ) Docket No. 3:17-BK-3566 (LTS)

17 )

18 ) PROMESA Title III

19 The Financial Oversight and )

20 Management Board for )

21 Puerto Rico, ) (Jointly Administered)

22 )

23 *as representative of* )

24 )

25 The Employees Retirement )

System of the Government )

of the Commonwealth of )

Puerto Rico, )

Debtors, )

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In Re: ) Docket No. 3:19-BK-5523 (LTS)  
)  
) PROMESA Title III  
The Financial Oversight and )  
Management Board for )  
Puerto Rico, ) (Jointly Administered)  
)  
*as representative of* )  
)  
The Puerto Rico Public )  
Buildings Authority, )  
)  
Debtors, )

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CONFIRMATION HEARING - DAY FOUR

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES:

ALL PARTIES APPEARING BY VIDEOCONFERENCE AND TELEPHONICALLY

For The Commonwealth  
of Puerto Rico, *et al.*: Mr. Martin J. Bienenstock, PHV  
Mr. Brian S. Rosen, PHV  
Mr. Michael A. Firestein, PHV  
Mr. Michael T. Mervis, PHV  
Mr. Paul V. Possinger, PHV  
Ms. Laura Stafford, PHV  
Ms. Margaret A. Dale, PHV  
Mr. Scott P. Cooper, PHV

1 APPEARANCES, Continued:

2 For Puerto Rico Fiscal  
3 Agency and Financial  
4 Advisory Authority and  
5 the Governor of  
6 Puerto Rico: Mr. Peter Friedman, PHV

7 For Peter C. Hein: Mr. Peter C. Hein, Pro Se

8 For Assured Guaranty  
9 Corp. and Assured  
10 Guaranty Municipal Corp: Mr. William J. Natbony, PHV

11 For Ambac Assurance  
12 Corporation: Ms. Atara Miller, PHV

13 For The Official  
14 Committee of Retired  
15 Employees: Ms. Catherine L. Steege, PHV

16 For AmeriNational  
17 Community Services, LLC: Mr. Nayuan Zouairabani Trinidad, Esq.

18 For Suiza Dairy Corp.: Mr. Rafael A. Gonzalez Valiente, Esq.

19 For National Public  
20 Finance Guarantee  
21 Corporation: Mr. Robert S. Berezin, PHV

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23

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San Juan, Puerto Rico

November 12, 2021

At or about 9:30 AM

\* \* \*

THE COURT: Good morning. Would the video participants please turn their cameras on for the introductory remarks, as usual?

Welcome back, counsel, parties in interest, and members of the public, and press who are observing today's proceedings by Zoom video or listening by telephone. Today's hearing is a continuation of the Confirmation Hearing for the Modified Eighth Amended Plan of Adjustment for the Commonwealth of Puerto Rico, et al.

I remind everyone that, consistent with court and judicial conference policies, and the orders that have been issued, no recording or retransmission of the hearing is permitted by anyone, including but not limited to the parties, members of the public, and the press. Violations of this rule may be punished with sanctions.

The Oversight Board has filed an Informative Motion providing the sequence of witnesses whose declarations the Oversight Board and the Retiree Committee intend to offer into evidence as direct testimony. That document was filed as docket entry no. 19163 in case no. 17-3283, and it is available to the public at no cost on Prime Clerk for those

1 who are interested.

2 I jumped ahead of myself in opening this proceeding,  
3 and at this point I would ask the clerk of court to make the  
4 proclamation and call the case.

5 COURTROOM DEPUTY: Thank you, Your Honor.

6 The United States District Court for the District of  
7 Puerto Rico is now in session. The Honorable Laura Taylor  
8 Swain presiding. Also sitting, the Honorable Magistrate Judge  
9 Judith Gail Dein. God save the United States of America and  
10 this Honorable Court.

11 *In re: The Financial Oversight and Management Board*  
12 *for Puerto Rico, as representative of the Commonwealth of*  
13 *Puerto Rico, et al.,* Bankruptcy Case Nos. 2017-3283,  
14 2017-3566, and 2019-5523, for Further Confirmation Hearing.

15 THE COURT: Thank you.

16 For the record, court was opened nunc pro tunc. The  
17 Informative Motion that the Oversight Board filed also  
18 includes the amount of cross-examination time that has been  
19 requested by Mr. Hein with respect to the particular  
20 witnesses.

21 I'll be calling on each participant during the  
22 hearing. If you wish to be heard at any point when I have not  
23 called on you, please use the "raise hand" feature of Zoom,  
24 which is in the reactions section of the toolbar at the bottom  
25 of the screen, at the appropriate time.

1                   This morning's session will go until 12:50, that is,  
2   ten minutes to 1:00 Atlantic Standard Time, that's ten minutes  
3   to 12:00 Eastern Time, with a ten-minute break at about 11:15  
4   AM Atlantic Standard, which is about 10:15 AM Eastern  
5   Standard. If necessary, we will resume at ten past 2:00  
6   Atlantic Standard, which would be ten past 1:00 Eastern  
7   Standard.

8                   Please note that I have entered an Order this morning  
9   at docket entry no. 19171 setting oral argument for next  
10   Monday and Wednesday on certain issues; setting deadlines for  
11   the filing of the revised proposed Confirmation Order and  
12   objections thereto; and requiring the filing of revised  
13   proposed findings of fact and conclusions of law after the  
14   conclusion of the closing arguments.

15                  I plan to amend this Order later today to provide a  
16   deadline for filing objections to the proposed findings and  
17   conclusions, and to deal with any other matters that may be  
18   brought up in relation to this Order. We can discuss it at  
19   the end of this session or before we adjourn this afternoon,  
20   depending on how quickly our proceedings go today.

21                  Are there any matters that need to be discussed  
22   before we turn to the evidentiary presentations?

23                  Mr. Rosen.

24                  MR. ROSEN: Good morning, Your Honor. Thank you.

25                  I did see the Order that was entered this morning,



1 and I appreciate you filling my dance card for the weekend, so  
2 thank you.

3 THE COURT: Well, we all need to be kept busy.

4 MR. ROSEN: Thank you, Your Honor.

5 Your Honor, at the Court's Order the other day with  
6 respect to the submission of a joint stipulation for the  
7 admission of exhibits, we have filed something this morning.  
8 There is a -- we would like to update the Court with respect  
9 to that, and if I could, I'd like to turn the podium over to  
10 Ms. Laura Stafford, who you know from many of our prior  
11 hearings.

12 THE COURT: Yes. Thank you, Mr. Rosen.

13 MR. ROSEN: Thank you.

14 THE COURT: Good morning, Ms. Stafford.

15 MS. STAFFORD: Good morning, Your Honor. Laura  
16 Stafford of Proskauer Rose for the Financial Oversight Board,  
17 for the record.

18 As Mr. Rosen noted, we wanted to provide you an  
19 update regarding the status of the parties' discussions  
20 regarding the exhibits. As the Court directed on Wednesday,  
21 the parties have worked diligently to address any remaining  
22 issues with respect to the admissibility of the various  
23 exhibits proffered by the parties.

24 This morning we filed a stipulation at ECF no. 19172  
25 in which the parties agreed to the admissibility of virtually

1 all of the exhibits that have been proffered by the parties to  
2 date. There is one outstanding issue that the DRA Servicer  
3 intends to raise regarding three exhibits proffered by the  
4 Monolines, and we propose that the Court take that up prior to  
5 the presentation of witnesses today, as we understand that  
6 after that issue is resolved, all of the exhibit issues should  
7 be resolved, and the admissibility of all exhibits should be  
8 determined.

9 And with that, I cede the floor to the DRA Servicer,  
10 in the event the Court wishes to take this up at this time.

11 THE COURT: Very well. We can proceed in that  
12 fashion.

13 Good morning, Mr. Zouairabani.

14 MR. ZOUAIRABANI TRINIDAD: Good morning, Your Honor.  
15 Attorney Nayuan Zouairabani for AmeriNational Services, LLC,  
16 as Servicer of the GDB-DRA from the law firm of McConnell  
17 Valdes.

18 Your Honor, as Ms. Stafford mentioned, we have a  
19 relevance objection with regard to three exhibits that were  
20 identified by the Monolines, and I'm referring to their  
21 Exhibits 45, 52, and 53, which were identified in the  
22 Attachment 1 of the stipulation that was filed today, which is  
23 docket 19172-1.

24 And, Your Honor, in a nutshell, the reason why we  
25 want to raise this is we have certain concerns. And just for

1 Your Honor's benefit, the Monolines have proffered to present  
2 few documents. Three of those documents -- I believe,  
3 actually, it's four of them, consist of resolutions. We don't  
4 have an objection to those.

5 The ones that we do have objections to relate to a  
6 loan agreement corresponding to one of the HTA loans; the  
7 security and assignment agreement of the GDB, which now it's  
8 for the DRA; and the UCC-1 financing statement corresponding  
9 to that financing -- to that assignment agreement, security  
10 agreement, Your Honor.

11 So the situation that we have is as follows: As you  
12 may recall, at Exhibit One of the stipulation that the DRA  
13 parties entered with the FOMB, this is docket 19100 on Exhibit  
14 A, paragraph 3 --

15 THE COURT: Hold on. I'm sorry.

16 MR. ZOUAIRABANI TRINIDAD: Yes.

17 THE COURT: Okay. Are we still in 19172, the  
18 document -- the 48-page exhibit document that was filed this  
19 morning?

20 MR. ZOUAIRABANI TRINIDAD: Yes, this relates to that.  
21 Yes, Your Honor.

22 THE COURT: Are you referring to a page where these  
23 disputed exhibits are listed?

24 MR. ZOUAIRABANI TRINIDAD: Yes. Bear with me, Your  
25 Honor. I'll -- it's in docket 19172-1.

1 THE COURT: Okay.

2 MR. ZOUAIRABANI TRINIDAD: Which is the Attachment  
3 1.

4 THE COURT: Yes.

5 MR. ZOUAIRABANI TRINIDAD: The first document that  
6 the DRA Servicer has an objection to is Exhibit 45. That's at  
7 page five --

8 THE COURT: Thank you.

9 MR. ZOUAIRABANI TRINIDAD: -- of that document.

10 THE COURT: Let me turn back to that.

11 MR. ZOUAIRABANI TRINIDAD: Sure.

12 THE COURT: I was flipping through to try to find it  
13 as you were speaking, and that got a little difficult, so this  
14 is helpful.

15 All right. So now I'm on page 5 of 35 of document  
16 19172-1, and the first document that we're talking about is  
17 Exhibit 45, which is described as August 28, 2013, loan  
18 agreement and amendments; is that correct?

19 MR. ZOUAIRABANI TRINIDAD: That is correct, Your  
20 Honor.

21 THE COURT: Okay.

22 MR. ZOUAIRABANI TRINIDAD: The second document --  
23 actually, the remaining two are on the same page. It's  
24 Exhibit 52.

25 THE COURT: Just one minute. Okay. 52 is described

1 as GDB assignment and security agreement and amendments.

2 MR. ZOUAIRABANI TRINIDAD: Correct.

3 THE COURT: All right.

4 MR. ZOUAIRABANI TRINIDAD: And the last one is  
5 Exhibit 53.

6 THE COURT: And that is described as UCC-1 financing  
7 statement filed by HTA, August 2013, and financing statement  
8 amendment.

9 MR. ZOUAIRABANI TRINIDAD: (Nodding head up and  
10 down.)

11 THE COURT: Thank you.

12 MR. ZOUAIRABANI TRINIDAD: Yes, Your Honor.

13 THE COURT: So you may proceed.

14 MR. ZOUAIRABANI TRINIDAD: Thank you, Your Honor.

15 So, Your Honor, at the stipulation the DRA parties  
16 entered with the Oversight Board on November 5, that's Exhibit  
17 One -- Exhibit A, I'm sorry, of docket 19100, for your  
18 benefit, Your Honor, paragraph 3, which talks about plan  
19 agreements. In (f), as in Freddy, there is a stipulation  
20 there that the Order dismissing the Adversary Complaint -- for  
21 your benefit, Your Honor, we're talking about -- this is ECF  
22 no. 83 in Adversary 21-0068.

23 So it says that that Order dismissing the Adversary  
24 Complaint, including, without limitation, that the GDB-HTA  
25 loans are subject to subordination to the HTA 68 Bonds and the

1 HTA 98 Bonds qualifies as the "GDB Loan Priority  
2 Determination," which is a defined term in the Plan of  
3 Adjustment for purposes of the Plan.

4 Okay. So the reason why this background is relevant  
5 as it relates to the three exhibits that we just mentioned is  
6 as follows: The position from the DRA Servicer is that Your  
7 Honor's decision in the adversary constitutes the GDB loan  
8 priority determination. As Your Honor may know, Class 59 in  
9 the Plan, which contains a waterfall for certain CW/HTA  
10 claims, organizes those creditors based on an understanding  
11 with regard to priorities.

12 One of the conditions for distribution under the Plan  
13 was that there be an adjudication in the GDB loan priority  
14 determination. The DRA position -- the DRA Servicer's  
15 position is that Your Honor's position in the adversary  
16 already considered that. So if the GDB loan priority  
17 determination is no longer an issue for purposes of  
18 confirmation of the Plan, these three exhibits that are being  
19 proffered by the Monolines do not make confirmation of this  
20 plan more or less probable or likely. They are not relevant,  
21 and they are not material under Rules 401 and 402 of Evidence,  
22 Federal Rules of Evidence. And the DRA parties had reserved  
23 the right to raise any relevancy issues with regard to these  
24 documents.

25 We sustain, in light of the course of how these cases

1 have gone, this relevancy issue has been brought further to  
2 light, and it is our position that we believe it should not be  
3 presented for Plan purposes, as this particular item, I mean  
4 the GDB loan priority determination, has already been  
5 resolved.

6 THE COURT: Thank you.

7 Does anyone else from your DRA constituency wish to  
8 be heard on this before I turn to counsel for the Monolines?  
9 I see that Mr. Natbony has his hand up. No one else has their  
10 hand up. So, Mr. Natbony.

11 MR. NATBONY: Thank you, Your Honor. William Natbony  
12 for Cadwalader Wickersham & Taft on behalf of Assured.

13 And I'll start, Your Honor, I don't know whether my  
14 colleagues may have something to add at the end, but simply  
15 put, Your Honor, the Plan being reviewed in this confirmation  
16 proceeding sets forth a Class 59 distribution based on the  
17 Board's review and understanding of the GDB loan documents and  
18 other documents demonstrating the subordination of the GDB  
19 loans, and any lien on Act 30-31 revenues.

20 The documents that we are seeking to enter are the  
21 same documents that the Court specifically relied upon in its  
22 October 29, '21, decision finding subordination, and the same  
23 documents that the DRA parties used in their adversary  
24 complaint. This Court has recognized consistently the  
25 important interrelationship between the confirmation

1 proceedings involving this Plan and the issue of the GDB loan  
2 subordination.

3 Our position, Your Honor, is that, as participating  
4 parties and supporters of the Plan, the Monolines should be  
5 permitted to admit the documents on that issue that the  
6 Monolines believe establishes support for the Plan, and the  
7 various priorities set forth in the Plan, as well as support  
8 Your Honor's decision, considering the documents were  
9 specifically relied upon by Your Honor.

10 The DRA Servicer -- and by the way, I should point  
11 out that there are no other objections to these documents,  
12 including the DRA Collateral Monitor does not oppose these  
13 three documents. The DRA Servicer asserts, because the Court  
14 issued its decision on subordination, the actual loan  
15 documents upon which the October 29 decision is based somehow  
16 become irrelevant. However, the DRA Servicer and its  
17 decisions on settlement, or whatever exhibits it wants to put  
18 in the record, should not be able to dictate what proof the  
19 Monolines can offer.

20 As separate participants and Plan supporters, the  
21 Monolines properly offer these few exhibits to make sure that  
22 the record here, and on any appeal, is complete to justify the  
23 Plan priorities and the Court's October 29 decision, which, if  
24 this Plan is confirmed, will be an important part of the  
25 Court's Confirmation Order and incorporated findings of fact



1 and conclusions of law.

2 That's our position, Your Honor. I don't know  
3 whether any of my colleagues have anything to add or if the  
4 Court has any questions. Other than that, I'll conclude my  
5 argument.

6 THE COURT: Thank you.

7 Mr. Berezin has his hand up. So Mr. Berezin next.

8 MR. BEREZIN: Thank you, Your Honor. I join the  
9 points raised by Mr. Natbony, and also would just add that the  
10 stipulation between the Board and the DRA parties certainly is  
11 binding between them, but it obviously does not represent --  
12 the DRA parties do not represent all possible parties in  
13 interest who could raise an objection.

14 The stipulation between those two parties simply does  
15 not dispose of the issue for relevance purposes in a  
16 proceeding of this magnitude, with this many potential parties  
17 who could raise an issue, whether now or later in the  
18 proceedings. So we would just add that the documents remain  
19 relevant, and that they should be admitted.

20 THE COURT: Thank you.

21 Mr. Zouairabani.

22 MR. ZOUAIRABANI TRINIDAD: Yes. Thank you, Your  
23 Honor. I'd like to briefly respond.

24 Your Honor, with regard to the position that some of  
25 the Monolines have just raised, the concern that we have -- we

1 | certainly are not contesting, and we've agreed as part of the  
2 | stipulation that there would be no appeals, there would be no  
3 | challenge from the DRA parties with regard to Your Honor's  
4 | decision on the adversary proceeding, in which Your Honor  
5 | relied on these documents in issuing that decision.

6 |           So under the terms of the stipulation, we have agreed  
7 | that that decision would be binding moving forward. That is  
8 | case of the law (sic), Your Honor. The concern that we have  
9 | with reasserting these documents in the Plan proceedings -- as  
10 | part of Plan confirmation is that that issue has already been  
11 | adjudicated; that issue has already been put to bed.

12 |           Not only is it just duplicative, but the truth of the  
13 | matter is the concern we have, especially based on the  
14 | comments that Mr. Natbony just mentioned, to preserve the  
15 | record on possible appeal, is the issue with regard to the GDB  
16 | loan priority determination should not be relitigated as part  
17 | of the Plan confirmation. I don't believe anyone else has  
18 | raised it. The Monolines have not challenged it specifically.  
19 | No other objectors to the Plan have challenged it.

20 |           So if the issue is case of the law, and the party who  
21 | would have most likely appealed it, which would have been the  
22 | DRA parties, are not going to do it, we believe this issue  
23 | should not be relitigated as part of this Plan confirmation.  
24 | That is why we sustain that Your Honor's decision, which  
25 | already considered these documents, and we've agreed that it

1 will be final and binding here, should stand.

2           These documents are duplicative and relevant under  
3 the Rules of Evidence, and that's why we sustain that the  
4 documents should not be presented -- they should not be  
5 admitted. I'm sorry.

6           THE COURT: Thank you.

7           Mr. Natbony, briefly.

8           MR. NATBONY: Yes, very briefly, Your Honor.

9           I would only reiterate Mr. Berezin's comments about  
10 the stipulation only being for the DRA parties. And I would  
11 also point out to the Court, in light of the stipulation or  
12 settlement entered into by the DRA parties, I would seriously  
13 question whether they even have standing to raise the  
14 objection that they're doing so today.

15           Thank you.

16           THE COURT: Thank you.

17           I've listened carefully to the remarks. The  
18 objection is overruled. The documents upon which I've made  
19 the determination are relevant in the broad sense to the  
20 propriety of the provisions of the Plan, and treatment of the  
21 respective claims of the parties who've asserted interest in  
22 the HTA-related funds, and, as Mr. Natbony and Mr. Berezin  
23 have indicated, are appropriate parts of the record as support  
24 for the ultimate determination, if such is made, that the Plan  
25 is confirmable. Therefore, the objection is overruled, and

1 the three contested exhibits, those being 45, 52, and 53, will  
2 be admitted as part of the record. Thank you.

3 (Whereupon Monolines' Exhibit Nos. 45, 52, and 53  
4 admitted into evidence.)

5 THE COURT: Let's see. Now there is a hand up from  
6 the Oversight Board. Mr. Rosen.

7 MR. ROSEN: Yes, Your Honor. Thank you very much for  
8 the ruling. If there is nothing further preliminarily, Your  
9 Honor, I would then hand this over to Mr. Bienenstock, and the  
10 presentation of our first witness of the day.

11 THE COURT: So the rest of the exhibit list will  
12 be -- the stipulation and exhibit list will be tendered as a  
13 whole after the conclusion of the Oversight Board's case; is  
14 that correct?

15 MR. ROSEN: That's fine, Your Honor. Yes.

16 THE COURT: Okay. That's fine.

17 I see that Peter Hein has his hand up, so Mr. Hein --

18 MR. HEIN: Yes, Your Honor. I think I put my hand up  
19 just to make sure that I was able to inquire, but it sounds to  
20 me like the actual tender of the exhibits and declarations  
21 will be at the end of the witness examinations, which is fine.  
22 I just wanted to inquire as to when I should speak up.

23 THE COURT: That's fine. I think it's appropriate  
24 for it to come after the conclusion of the Oversight Board's  
25 case by way of wrapping up the remainder of the record as to

1 the other parties. So we will come back to that after the  
2 conclusion of the presentation of the declarations and  
3 cross-examination.

4 So now we will turn to the tender of the next  
5 witness, the declaration of Andrew Wolfe.

6 MR. BIENENSTOCK: Thank you, Your Honor. This is  
7 Martin Bienenstock of Proskauer Rose, LLP, for the Oversight  
8 Board, as the Title III representative of the debtors.

9 Our next witness, as Your Honor mentioned, is Dr.  
10 Andrew Wolfe. Dr. Wolfe is a macroeconomist, whose expert  
11 qualifications and experience are detailed in his expert  
12 declaration, ECF no. 18725.

13 Dr. Wolfe is offered as an expert to opine on the  
14 issue of whether there are actions that can be taken by the  
15 Government of Puerto Rico, which, if implemented, would  
16 produce sufficient resources to allow for the full repayment  
17 of the Commonwealth's restructured post-confirmation debt  
18 service, principal and interest, as provided for in the Plan  
19 of Adjustment.

20 No motion or objection has been received, either  
21 disputing Dr. Wolfe's qualifications or objecting to his  
22 testimony. We ask that Dr. Wolfe be accepted by the Court as  
23 an expert qualified to testify on the subject addressed in his  
24 declaration.

25 THE COURT: No objections have been filed. Does

1 | anyone else wish to be heard on this?

2 |           Seeing no hands, the Court accepts the tender of Dr.  
3 | Wolfe as an expert, and admits the declaration, which is at  
4 | ECF no. 18725.

5 |           (At 9:54 AM, the Wolfe Declaration admitted into  
6 | evidence.)

7 |           THE COURT: Mr. Hein has requested 30 minutes for  
8 | cross-examination. Unless, Mr. Bienenstock, you have anything  
9 | further to say before we turn to Dr. Wolfe, I'd ask that Dr.  
10 | Wolfe be put on camera.

11 |           MR. BIENENSTOCK: I have nothing more, Your Honor.

12 |           THE COURT: Thank you.

13 |           So, Dr. Wolfe, are you there?

14 |           THE WITNESS: Yes, I am, Your Honor.

15 |           THE COURT: Good morning, Dr. Wolfe. The courtroom  
16 | deputy will administer the oath.

17 |           COURTROOM DEPUTY: Raise your right hand.

18 |           Do you solemnly swear that all the testimony you are  
19 | about to give will be the truth, the whole truth, and nothing  
20 | but the truth?

21 |           THE WITNESS: I do.

22 |           COURTROOM DEPUTY: So help you God.

23 |           THE WITNESS: I do.

24 |           THE COURT: Thank you. You may put your hand down.

25 |           Mr. Hein, you may inquire.

1 MR. COOPER: Your Honor, I don't mean to interrupt,  
2 but I just wanted to note for the record, this is Scott Cooper  
3 of Proskauer Rose on behalf of the Oversight Board, and I'll  
4 be representing the witness during the testimony.

5 THE COURT: Thank you for making that clear,  
6 Mr. Cooper. Good morning.

7 MR. COOPER: Good morning, Your Honor.

8 MR. HEIN: May I proceed, Your Honor?

9 THE COURT: Yes, you may.

10 MR. HEIN: Great. Thank you.

11 A N D R E W W O L F E,

12 called as a witness by the Debtors, having been sworn,  
13 testified as follows:

14 CROSS-EXAMINATION

15 BY MR. HEIN:

16 Q. Dr. Wolfe, you've been involved with Puerto Rico since  
17 late 2014 when you were retained by the Government Development  
18 Bank of Puerto Rico, correct?

19 A. Yes.

20 Q. And during that time, you and two colleagues, Dr. Krueger  
21 and Dr. Teja, co-authored a report entitled Puerto Rico, A Way  
22 Forward, correct?

23 A. Yes.

24 Q. And many of the structural reforms, to lay a foundation,  
25 for private sector activity and to raise productivity and

1 growth that you propose in that 2015 report, or that you  
2 propose in this case, were initially proposed by you and  
3 others going back to 2015, correct?

4 A. Some, yes.

5 Q. And most of the reforms that you and Dr. Krueger and  
6 others were proposing back in 2015 never got adopted, correct?

7 A. Correct.

8 Q. And then the Oversight Board was installed in 2016,  
9 correct?

10 A. Yes.

11 Q. And you began working with the Oversight Board, correct?

12 A. Yes. Later than when it first was installed.

13 Q. And the Oversight Board, with the benefit of input from  
14 you and others, has also repeatedly recommended structural  
15 reforms to lay the foundation for private sector investments,  
16 which in turn would increase productivity and growth in Puerto  
17 Rico, correct?

18 A. Yes.

19 Q. The Oversight Board has been urging the Commonwealth  
20 Government to carry out these structural reforms since 2017,  
21 correct?

22 A. Correct.

23 Q. The necessary structural and other reforms have been  
24 spelled out in each of the Oversight Board certified fiscal  
25 plans, correct?



1 MR. COOPER: Object to the form, vague.

2 THE COURT: Please rephrase.

3 BY MR. HEIN:

4 Q. Necessary structural and other reforms have been  
5 identified and described in the Oversight Board's certified  
6 fiscal plans from the time the first fiscal plan was issued up  
7 through the last fiscal plan in April of this year, correct?

8 A. Yes. Every fiscal plan has had structural reform  
9 sections.

10 Q. And there are chapters in the most recent fiscal plan,  
11 from April of 2021, that spell out reforms, like human capital  
12 and welfare reform, correct?

13 A. Yes.

14 Q. K-2 (sic) education reform, correct?

15 A. Yes.

16 Q. Ease of doing business reform, correct?

17 A. Yes.

18 Q. Cultivating a high performing public workforce, correct?

19 A. Yes.

20 Q. Agency efficiency measures, correct?

21 A. Those are characterized as just fiscal measures.

22 Q. Municipal services reforms, correct?

23 A. Again, they're more fiscal policy reform than structural  
24 reforms.

25 Q. Okay. Now, whether to adopt structural reforms to

1 enhance economic growth and prosperity in Puerto Rico has been  
2 within the control of the Commonwealth Government going back  
3 to 2015, correct?

4 A. Yes.

5 Q. But to date, the Commonwealth Government has still  
6 largely failed (inaudible) going back to 2017?

7 THE COURT: Mr. Hein, from our end, you froze, and so  
8 if you would go back and ask the question again, we didn't  
9 hear it all.

10 MR. HEIN: Okay. The one beginning "but" -- I just  
11 want to make sure that --

12 THE COURT: Something like, "but of many of" or  
13 something --

14 MR. HEIN: Yes. Yes.

15 BY MR. HEIN:

16 Q. But to date, the Commonwealth Government has still  
17 largely failed to implement the structural reforms recommended  
18 by the Oversight Board going back to 2017, correct?

19 A. Not really. Partially. They've implemented a few  
20 reforms, but not all the reforms.

21 Q. Your report in this case in paragraph 12, in the first  
22 sentence reads "to date, the Commonwealth Government has  
23 largely failed to implement the structural reforms recommended  
24 by the Board."

25 That's what you said in your report, page 4,

1 paragraph 12, correct?

2 A. Yes. But your question didn't include the word  
3 "largely".

4 Q. (Inaudible) adhered to what you said in that sentence of  
5 your report, correct?

6 A. Is it possible to repeat?

7 Q. Let me --

8 A. Yes. I kind of lost --

9 Q. Sure.

10 So my question is simply that you remain in agreement  
11 with what you said in your report in this case that was filed  
12 in September, that to date, the Commonwealth Government has  
13 largely failed to implement the structural reforms recommended  
14 by the Board. That's your report, that's your testimony,  
15 correct?

16 A. Yes.

17 Q. Among these structural reforms that you and others have  
18 advocated going back to 2015, were reforms of the (inaudible)  
19 markets, correct?

20 THE COURT: Mr. Hein, you broke up again. Please  
21 state that last question again.

22 MR. HEIN: Sure. Thank you, Your Honor.

23 BY MR. HEIN:

24 Q. Among the structural reforms that you and others  
25 advocated going back to 2015, were reforms of the labor

1 markets, correct?

2 A. Correct.

3 Q. Among the structural reforms that you and others  
4 recommended were reforms to ease doing business, correct?

5 A. Correct.

6 Q. And among the structural reforms you and others  
7 recommended were reforms relative to taxation, correct?

8 A. Yes.

9 Q. In the area of labor markets, what is the labor  
10 participation rate, and why is that significant?

11 MR. COOPER: Object to the form. Vague.

12 THE COURT: Please rephrase, Mr. Hein.

13 BY MR. HEIN:

14 Q. You're familiar with the term "labor participation rate",  
15 correct?

16 A. Yes.

17 Q. And you used it in your report, correct?

18 A. Yes.

19 Q. And why is labor participation rate something that you  
20 look at?

21 A. Well, the labor parti -- the amount of labor in any  
22 economic system, multiplied by the average productivity of  
23 that system, will give you an estimate of GNP and output and,  
24 implicitly, growth.

25 Q. And why is -- the current Puerto Rico labor market

1 participation rate is in the area of 40 percent, correct?

2 A. Yes.

3 Q. And why is the fact that the current Puerto Rico labor  
4 participation rate is only in the area of 40 percent something  
5 that suggests that structural reforms of the labor market are  
6 needed?

7 A. That's an extremely low rate. If you look at the lowest  
8 rate, for instance, of a mainland state, it's in the upper 50  
9 percent range. I think it's West Virginia. And so there is a  
10 missing amount of labor that's being employed in the formal  
11 sector that can generate growth, revenue, and, importantly,  
12 taxable revenue.

13 Q. In the continental United States, you mentioned West  
14 Virginia, which has the lowest labor participation rate of any  
15 state, and that's in the mid 50s, correct?

16 A. Yeah. I think it's like 57 percent.

17 Q. But the average throughout the continental United States,  
18 what is the average labor participation rate currently?

19 A. I don't know the exact number offhand.

20 Q. It's around 62 percent, correct?

21 A. That sounds correct.

22 Q. So the gap we're talking about is a gap between 62  
23 percent and approximately 40 percent, correct?

24 A. Not necessarily. Not necessarily.

25 Q. There's -- you would agree there's a very large gap

1 between the states in the continental U.S. and Puerto Rico?

2 A. Yes.

3 Q. And there is data on the World Bank website, among other  
4 places, where one can look up labor force participation rate  
5 in other Caribbean islands, correct?

6 A. Correct.

7 Q. And you've looked at labor participation rates in other  
8 Caribbean islands, correct?

9 A. Not recently, no.

10 Q. The Puerto Rico labor participation rate is also lower  
11 than that in many of the other Caribbean islands, correct?

12 A. Correct, the last time I looked.

13 Q. Am I correct that the labor force participation rate in  
14 Puerto Rico has been consistently lower than many other  
15 Caribbean economies?

16 A. Yes.

17 Q. You reference -- on the subject of ease of doing  
18 business, you reference the World Bank ease of doing business  
19 report rankings as something that underscores the need for  
20 structural reforms to enhance and improve the private sector  
21 labor market in Puerto Rico, correct?

22 A. Yes.

23 Q. And you actually even cite to one of the World Bank ease  
24 of doing business rankings, correct?

25 A. Yes.

1 Q. And in fact, Puerto Rico's rankings in the World Bank  
2 ease of doing business rankings has actually gotten worse  
3 since 2017, correct?

4 A. I don't recall the exact differential offhand. I don't  
5 think they've changed very much.

6 Q. To find that out, you would look at, say, the 2017 World  
7 Bank ease of doing business report and compare it to, say, the  
8 2020, correct?

9 A. Yes, by type of reform area.

10 Q. A third area you mentioned is taxation, correct?

11 A. Yes.

12 Q. And one concern that's stated in the current -- the  
13 current Oversight Board Fiscal Plan from April 2021 is that  
14 Puerto Rico issues more than 300 tax incentives, with total  
15 foregone revenue in excess of 21 billion, correct?

16 MR. COOPER: Objection, form, vague.

17 THE COURT: Please rephrase.

18 BY MR. HEIN:

19 Q. You're familiar with the Oversight Board's chapter in the  
20 current fiscal plan on the subject of taxation, correct?

21 A. I've looked at it in the past, yes.

22 Q. And that chapter makes the statement that Puerto Rico  
23 issues more than 300 tax incentives, with total foregone  
24 revenue in excess of 21 billion, correct?

25 A. I'd have to look back at the report, but I don't remember

1 | that exact line.

2 | Q. Whether or not you recall --

3 | A. Yeah.

4 | Q. -- that exact statement, there is an issue in Puerto Rico  
5 | with tax incentives being excessive and with substantial  
6 | foregone revenue losses, correct?

7 | A. Yes.

8 | Q. When you worked with Dr. Krueger and Dr. Teja on the  
9 | Krueger Report, did the three of you conclude that it would  
10 | bolster Puerto Rico's economy if Puerto Rico maintained the  
11 | existing defined benefit pensions for public employees  
12 | unchanged? Did you -- the three of you conclude this would be  
13 | good for Puerto Rico's economy?

14 | A. I don't -- I don't recall us opining on that at all.

15 | Q. Would you agree that an important step Puerto Rico could  
16 | take for the benefit of its residents, including those who  
17 | work in the private sector, is to finally enact the structural  
18 | reforms that you and others have been recommending for the  
19 | past six years?

20 | A. I believe Puerto Rico needs to enact -- it's in their  
21 | interest to enact those reforms.

22 | Q. And, indeed, you've concluded that if Puerto Rico were to  
23 | adopt the structural reforms that you've recommended, Puerto  
24 | Rico could build surpluses that total over 30 billion dollars  
25 | in the years to come, correct?



1 A. Yes. That's what's in my report.

2 MR. HEIN: Thank you very much. I have no further  
3 questions.

4 THE COURT: Thank you, Mr. Hein.

5 Mr. Cooper, any redirect?

6 MR. COOPER: No, Your Honor.

7 THE COURT: Then thank you, Dr. Wolfe. Your  
8 testimony has concluded. You are excused.

9 THE WITNESS: Thank you, Your Honor.

10 (At 10:09 AM, witness excused.)

11 THE COURT: The next listed witness is Mr. Chepenik.

12 MR. COOPER: Your Honor.

13 THE COURT: Yes, Mr. Cooper.

14 MR. COOPER: While we change witnesses, I've been  
15 asked by my colleagues to make sure that the record is clear  
16 that Dr. Wolfe's declaration, which is ECF no. 18725, has been  
17 admitted into evidence. I believe I heard you say it was, but  
18 I've been asked to confirm that on the record.

19 THE COURT: Yes. I think I did say that before, but  
20 for the avoidance of doubt, Dr. Wolfe's declaration at ECF no.  
21 18725 is admitted in evidence.

22 MR. COOPER: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. BIENENSTOCK: Your Honor, this is Martin  
25 Bienenstock. Is it okay to proceed with our next witness?

1 THE COURT: Yes, please.

2 MR. MARTINEZ: Thank you, Your Honor. Martin  
3 Bienenstock for Proskauer Rose, for the Oversight Board, as  
4 Title III representative.

5 The Oversight Board's next witness is Mr. Adam  
6 Chepenik of Ernst & Young. I move his original declaration,  
7 ECF no. 18735, dated October 25, 2021, into evidence, and his  
8 amended declaration at ECF no. 19054-02, dated November 3,  
9 2021, into evidence, Your Honor.

10 THE COURT: If there's any objection, please raise  
11 your hand.

12 Seeing no hands raised, and no objection having been  
13 filed, the original declaration of Mr. Chepenik filed at ECF  
14 no. 18735, and the amended declaration of Mr. Chepenik filed  
15 at ECF no. 19054-02 are admitted in evidence.

16 (10:14 AM, the Chepenik Declarations admitted  
17 into evidence.)

18 MR. BIENENSTOCK: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. BIENENSTOCK: I'm going to turn things over now  
21 from the Oversight Board's perspective to my partner, Mike  
22 Mervis.

23 THE COURT: Very well. Thank you.

24 Mr. Chepenik, the courtroom deputy will now  
25 administer the oath to you.

1 COURTROOM DEPUTY: Please raise your right hand.

2 Do you solemnly swear that all the testimony you are  
3 about to give will be the truth, the whole truth, and nothing  
4 but the truth?

5 THE WITNESS: I do.

6 COURTROOM DEPUTY: So help you God.

7 THE WITNESS: So help me God.

8 THE COURT: Thank you.

9 Mr. Hein, you may inquire. Mr. Hein --

10 MR. MERVIS: I believe Mr. Hein's muted.

11 THE COURT: -- you have to unmute yourself. Thank  
12 you.

13 You've reserved 15 minutes for the cross-examination.

14 MR. HEIN: Can you hear me now, Your Honor?

15 THE COURT: Yes. Thank you.

16 MR. HEIN: Thank you, and good morning.

17 A D A M C H E P E N I K,

18 called as a witness by the Debtors, having been sworn,  
19 testified as follows:

20 CROSS-EXAMINATION

21 BY MR. HEIN:

22 Q. I want to start with your declaration's discussion of  
23 proposed reserve funds that you say are within accepted  
24 limits. Your term is "accepted limits," correct?

25 A. Correct.

1 Q. And your proposed first reserve fund is a budget  
2 stabilization fund, sometimes referred to as a rainy day fund,  
3 correct?

4 A. Correct.

5 Q. And an example of a rainy day for budget purposes would  
6 be recession or other economic downturn, correct?

7 A. That could be one of many uses of a rainy day fund.

8 Q. And others might be a pandemic, or a natural disaster,  
9 something that disrupts economic activity, disrupts revenues  
10 and cash flow, correct?

11 A. I do not agree with that, no.

12 Q. You would agree that, for budget purposes, something that  
13 disrupts the economic flow of revenue to the government would  
14 be loosely characterized as a rainy day, and requiring some  
15 fund to tie one over, correct?

16 MR. MERVIS: Your Honor, I object to the form. It's  
17 vague.

18 THE COURT: Sustained. Please rephrase.

19 BY MR. HEIN:

20 Q. The purpose of a budget stabilization fund, or rainy day  
21 fund is to ensure if there's some reduction in revenues, that  
22 the government has money to help get it through the period,  
23 correct?

24 A. Generally, that's correct.

25 Q. And you think it's within accepted bounds for the

1 proposed rainy day fund that is proposed in your declaration  
2 to contain 1.2 billion to 1.7 billion, correct?

3 A. That is a reasonable range, correct.

4 Q. And you discussed in your declaration various benchmarks  
5 for deciding how much is appropriate for the budget  
6 stabilization fund, or rainy day fund, and they range from 1.1  
7 billion, which is the cut-off after which the Federal  
8 Government said it would not permit the Commonwealth to access  
9 community disaster loan funding, correct?

10 A. I wouldn't use the word "benchmark," but various  
11 approaches, that's generally correct.

12 Q. Sure. And Detroit bankruptcy was 753 million, correct?

13 A. Correct.

14 Q. Following an approach suggested by the National  
15 Association of State Budget Officers, 500 million to a  
16 billion, correct?

17 A. Correct.

18 Q. Following an approach suggested by Government Finance  
19 Officers Association, 1.65 billion, correct?

20 A. Correct.

21 Q. Suggestions by the Pew Trust would suggest 1.24 billion,  
22 correct?

23 A. Correct.

24 Q. Groups like the National Association of State Budget  
25 Officers or Government Finance Officers Association are, by

1 | their nature, going to urge typically greater reserves,  
2 | correct?

3 | A. I don't know that to be true.

4 | Q. These are not groups that want to cut it close to the  
5 | line? They do want reserves, correct?

6 | A. Generally correct, yes.

7 | Q. And, on the other hand, having too much cash just sitting  
8 | in the bank could actually pose an issue potentially, as it  
9 | did for the Commonwealth several years ago with access to  
10 | federal funds, correct?

11 | A. I apologize. I don't quite understand the question and  
12 | the context of problems with federal funds and having too much  
13 | money.

14 | Q. You recall that the Federal Government was unwilling to  
15 | advance funds pursuant to the community disaster loan funding  
16 | if Puerto Rico's balances were above 1.1 billion, correct?

17 | A. I recall the Federal Government making public statements  
18 | that below 1.1 billion would be a critically low level, at  
19 | which the Commonwealth would certainly need additional  
20 | liquidity support.

21 | Q. You say that the range presented to the Oversight Board  
22 | for a budget stabilization fund was 1.2 billion to 1.7  
23 | billion, correct?

24 | A. Correct.

25 | Q. And the upper end of that range, 1.7 billion, exceeds all

1 five of the comparative measures you discuss in your  
2 declaration, correct?

3 A. I'm sorry. You were breaking up on the question.

4 Q. The upper end of the range proposed, the 1.7 billion,  
5 exceeds the amount of all five of the different comparatives  
6 you've looked to as potential benchmarks, correct?

7 A. You did not mention the sixth approach, which was the  
8 government's request for a balance which exceeded that 1.7  
9 billion dollar number.

10 Q. But in terms of things other than the Puerto Rico  
11 Government, the 1.7 exceeds the different benchmarks you  
12 discussed, correct?

13 A. It is slightly higher, correct.

14 Q. And you proposed going beyond just a budget stabilization  
15 fund. You're also proposing a disaster aid revolving fund of  
16 750 million, and an emergency reserve of 1.3 billion, which  
17 would be additional on top of 1.2 to 1.7 billion, correct?

18 A. That is a recommendation, correct.

19 Q. And the total of the three reserves would then be in the  
20 area of 3.25 billion to 3.75 billion, correct?

21 MR. MERVIS: Objection to the form, Your Honor. I  
22 don't think there's been a -- I don't think we've heard about  
23 the third reserve yet, if it is a reserve.

24 THE COURT: Sustained. Please rephrase.

25 BY MR. HEIN:

1 Q. You have your rainy day fund, 1.2 to 1.7 billion,  
2 disaster aid revolving fund is 750 million, and emergency  
3 reserve proposed at 1.3 billion, correct?

4 A. That was the recommended allocations for different  
5 purposes, correct.

6 Q. And when you add that up together, you have reserves that  
7 total 3.25 billion to 3.75 billion, correct?

8 A. Eventually, although those amounts are not currently  
9 funded in their entirety.

10 Q. On the proposal for reserve funds, the amount ultimately  
11 at least withheld or retained by the Commonwealth as reserves  
12 would range from 27.8 percent of General Fund revenues  
13 projected in fiscal 2022, to 32.3 percent of General Fund  
14 revenues projected for 2022, correct?

15 A. Again, the third reserve, the emergency reserve is not  
16 fully funded at the moment, and so at the moment, that  
17 percentage is not accurate.

18 Q. But when it is fully funded, those percentages would be  
19 accurate, correct?

20 A. Potentially, that was the recommended range. Although, I  
21 would also say that first, minimum cash balance ultimately  
22 decided upon by the Oversight Board in their judgment was  
23 different than the 1.2 to 1.7 billion dollar recommended  
24 range.

25 Q. Do you identify in your report any jurisdiction that



1 holds in cash reserves anything on the order of 28 to 32  
2 percent of its General Fund revenues?

3 A. Yes.

4 Q. And which do you identify?

5 A. So there are a number of jurisdictions, both domestically  
6 large and small cities, as well as foreign sovereigns that  
7 maintain balances in the approximate range of what's being  
8 proposed.

9 In a sovereign context, you can take a country like  
10 Trinidad and Tobago, also in the Caribbean region, that  
11 maintains approximately 25 percent of its both import cover  
12 reserves to maintain currency stability, as well as maintains  
13 more than 11 percent solely for the purpose of emergency  
14 reserve purposes for hurricanes and other disasters.

15 Domestically, you can look at jurisdictions like San  
16 Francisco, which maintains a considerable amount of its  
17 reserves, both for rainy day purposes, and separately they  
18 have 12 different reserves, including emergency reserves, to  
19 maintain for other purposes.

20 Other cities like Colorado Springs maintain 25  
21 percent of its allocation of General Fund reserves, both split  
22 evenly 12 and a half percent for rainy day purposes and 12 and  
23 a half percent for emergency purposes.

24 Q. And there are others that don't, correct?

25 A. I can't speak to all jurisdictions, but there is a range

1 of how much cities reserve, and I've disclosed that, I  
2 believe, in paragraphs 15 and 19 of my declaration.

3 Q. And, indeed, would it be fair to say that preponderantly,  
4 jurisdiction states, for example, would not have reserves at  
5 the level that you are suggesting here?

6 A. I don't believe I can conclude -- say that that is  
7 accurate. If you look at -- you know, if you look at the  
8 ranges, there's more than 20 states that maintain reserves in  
9 excess of ten percent.

10 Q. So there are 30 states who have reserves lower than ten  
11 percent, correct?

12 A. For rainy day fund purposes.

13 Q. Thank you. Now, you also referred to various restricted  
14 accounts in the second part of your declaration, correct?

15 A. Correct. You mean the cash balance --

16 Q. Yes.

17 A. -- analysis?

18 Q. Yes.

19 A. (Nodding head up and down.)

20 Q. And there's certain restricted accounts that can only be  
21 used to pay GO debt or are available only to pay GO debt,  
22 correct?

23 A. In my analysis, I've identified -- or we have identified  
24 one account that has a balance, I believe, that meets the  
25 description you're asking about.

1 Q. And what is that account called?

2 A. I have my declaration, if I can refer -- if I can refer  
3 to my declaration, I just --

4 Q. Sure. Please.

5 A. The one account I was thinking about is in paragraph  
6 57(d), like David, and it has approximately, I believe, 34  
7 million dollars in it.

8 Q. Are you familiar with the GO Redemption Fund account?

9 A. Generally, but not with a high degree of specificity.

10 Q. That's an account that holds money from the 1.03 percent  
11 property tax to be applied to pay GO debt service, correct?

12 A. I'm not overly familiar with the account. I'm familiar  
13 with the 1.03 percent, but not where -- not which account that  
14 money rests in.

15 Q. And that account that I've referred to, the GO Redemption  
16 Fund account, currently has a balance of approximately 600  
17 million, correct?

18 A. I'm not aware. I don't know.

19 Q. And it's not --

20 A. I don't recall.

21 Q. It's not in your declaration, or list attached to your  
22 declaration, correct?

23 MR. MERVIS: Your Honor, can I just -- I'd like to  
24 interpose an objection to this line. I've held back, but if I  
25 could just have a moment to explain the basis of the

1 objection, Your Honor.

2 THE COURT: Yes. Go on.

3 MR. MERVIS: As the Court will recall, the parties  
4 were required to submit pretrial informative motions in which  
5 they would identify which witnesses they wished to  
6 cross-examine, how much -- on which topics, and Mr. Hein's  
7 informative motion is at docket 18861.

8 I'll give Your Honor a moment if you want to call  
9 that up.

10 THE COURT: That would not be easy for me.  
11 Actually --

12 MR. MERVIS: Well, I appreciate that, Your Honor. I  
13 will read you what it says, and I believe I will read it  
14 accurately.

15 THE COURT: All right.

16 MR. MERVIS: So for Mr. Chepenik it says "practices  
17 with respect to budget stabilization, rainy day, emergency and  
18 revolving funds, and levels of such funds proposed for the  
19 Commonwealth." That's it.

20 And for the last minute or two, we've been talking  
21 about a completely different fund or two different funds that  
22 apparently are for funding of GO debt.

23 (Sound played.)

24 MR. MERVIS: But it's not any of the ones that  
25 Mr. Hein identified, and, therefore, we didn't prepare the

1 witness to address these kind of questions. So that's our  
2 objection.

3 THE COURT: Mr. Hein?

4 MR. HEIN: Yes. The reason I'm asking, Your Honor,  
5 is that the declaration addresses various funds. There's  
6 exhibits attached that list various funds. These funds are,  
7 as best I can tell, not listed.

8 And it's a very brief line of inquiry, but I just  
9 wanted to determine if they were listed here and I missed it,  
10 or if it's that they aren't listed. That's really where I'm  
11 going, Your Honor. It's that brief.

12 THE COURT: Well, you may ask whether they are listed  
13 in the testimony, but not for details of them or their  
14 operation or treatment. We will put another two minutes on  
15 the clock for you.

16 MR. HEIN: Thank you, Your Honor.

17 BY MR. HEIN:

18 Q. So with respect to the GO Redemption Fund account that I  
19 referred to, is it listed in the exhibits to your declaration  
20 or in your declaration?

21 A. I do not recall.

22 Q. And there's the secondary restricted account called the  
23 clawback account, which contains revenues retained by the  
24 government, which can be used for the payment of GO debt. Do  
25 you know if that is listed in the exhibits to your

1 declaration?

2 A. I do not recall if they're embedded in one of those first  
3 three accounts, the large Department of Treasury accounts that  
4 we commonly refer as the TSA balance.

5 Q. Talking about the TSA cash report, the last cash report  
6 came out on November 10th, earlier this week, and shows about  
7 12.164 billion unrestricted cash. Does that sound about  
8 right?

9 MR. MERVIS: Your Honor, it's the same objection.  
10 He's way beyond the topics that were identified in his  
11 informative motion.

12 THE COURT: Sustained.

13 MR. HEIN: Well, respectfully, I'm trying to lay a  
14 foundation for my next question, which ties it in, Your Honor.

15 THE COURT: Subject to connection, you may ask.

16 (Sound played.)

17 MR. HEIN: Thank you.

18 MR. MERVIS: Can I ask that the question be restated  
19 for the witness, Your Honor?

20 MR. HEIN: Sure.

21 BY MR. HEIN:

22 Q. The last TSA cash report from November 10 shows  
23 approximately 12.164 billion unrestricted cash in the TSA  
24 account as of October 29. Does that -- is that approximately  
25 correct?

1 A. That sounds approximately correct.

2 Q. So if you take the cash on that latest TSA unrestricted  
3 cash report, and if you take additional money that may be  
4 available for payment only of GO debt, and you subtract the  
5 3.75 billion for the three reserve accounts you propose, am I  
6 correct that even after establishing reserves in the level of  
7 3.25 billion to 3.75 billion, the Commonwealth will still have  
8 over 9 billion dollars in unrestricted cash that, under  
9 Commonwealth law, could be used to pay GO and government  
10 guaranteed debt?

11 MR. MERVIS: Object to the form, Your Honor. First,  
12 it assumes facts not in evidence. Second, it calls for a  
13 legal conclusion. Third, it is outside the scope of the  
14 topics identified by Mr. Hein in his informative motion.

15 THE COURT: Sustained.

16 MR. HEIN: I then have no other questions, Your  
17 Honor.

18 THE COURT: Thank you, Mr. Hein.

19 Mr. Mervis, do you have any questions?

20 MR. MERVIS: I do, Your Honor, very, very briefly.

21 REDIRECT EXAMINATION

22 BY MR. MERVIS:

23 Q. Mr. Chepenik, one of the three funds that Mr. Hein  
24 referred to as the reserve is a \$750,000 disaster aid  
25 revolver; is that right?

1 A. 750 million.

2 Q. Sorry. Yes, million. Sometimes I lose those zeros.

3 And to your understanding, under the Eighth Amended  
4 Plan of Adjustment, is there a point in time when that  
5 revolver will cease to exist?

6 A. There is, yes.

7 Q. And to your understanding, what happens with the funds  
8 under the Eighth Amended Plan of Adjustment, what happens to  
9 the funds in that revolver at that point in time?

10 A. So the full 750 million dollars at that point in time  
11 will be distributed to creditors as part of the Eighth Amended  
12 Plan.

13 Q. Mr. Chepenik, do you have Exhibit 31 handy? I can pass  
14 you mine, if need be.

15 A. Yes. Just one moment.

16 MR. MERVIS: And Your Honor --

17 THE WITNESS: Oh, actually -- yes, it's not in  
18 here.

19 BY MR. MERVIS:

20 Q. Yes. I'll pass mine.

21 MR. MERVIS: But, Your Honor, this is Debtors'  
22 Exhibit 31, if you need a moment to pull it up.

23 THE COURT: I need a moment to pull it up.

24 MR. MERVIS: This was identified by Mr. Hein as a  
25 cross-exhibit last night.



1 THE COURT: All right. Just give me a moment.

2 I have it now.

3 MR. MERVIS: Thank you.

4 BY MR. MERVIS:

5 Q. And if you could turn to page 18 or slide 18 of the -- of

6 that document. First of all, before we get there,

7 Mr. Chepenik, what is Exhibit 31?

8 A. Exhibit 31 is a presentation that executive director

9 Natalie Jaresko presented to the Oversight Board describing

10 the different components of the Plan of Adjustment on, I

11 believe, September 17.

12 Q. Okay. Now, directing your attention to slide 18.

13 MR. MERVIS: And, Your Honor, have you been able to  
14 get there?

15 THE COURT: Well, I am on a page that seems to be  
16 page 18 of a PowerPoint presentation. The top line says "Six,  
17 government retains significant cash."

18 Is that the page I'm supposed to be on? It's page 19  
19 of the PDF.

20 MR. MERVIS: I believe so, Your Honor. I passed my  
21 only copy to the witness, but yes, that is the one.

22 THE COURT: Thank you.

23 BY MR. MERVIS:

24 Q. Mr. Chepenik, if you could look at the lower right-hand  
25 corner of the exhibit, there's a box that has a number of

1 figures. Do you see that?

2 A. I do, yes.

3 Q. And you mentioned this in response to Mr. Hein's  
4 questions about the minimum -- the range of the 1.2 to 1.7  
5 billion dollar minimum cash reserve.

6 Is there a line in that box that represents the  
7 Oversight Board's current thinking or current setting of that  
8 minimum cash reserve?

9 A. Yes, there is.

10 Q. And which line is that?

11 A. I believe it's the fourth line down. The Oversight Board  
12 ultimately determined in their judgment that one billion  
13 dollars would be sufficient minimum cash.

14 Q. Thank you.

15 MR. MERVIS: Your Honor, I have nothing further.

16 THE COURT: Thank you.

17 Mr. Hein.

18 MR. HEIN: May I just -- yes.

19 RECROSS-EXAMINATION

20 BY MR. HEIN:

21 Q. Let me just clarify, Mr. Chepenik. So instead of the 1.2  
22 to 1.7 billion that's referred to for a rainy day fund in your  
23 declaration, the Oversight Board is actually simply looking  
24 for one billion dollars? Am I understanding that correctly?

25 A. So the amount that was presented to the Oversight Board,

1 based on those six comparable approaches in my declaration,  
2 resulted in a recommended range of 1.2 to 1.7 billion dollars.  
3 The Oversight Board considered that and subsequently  
4 determined that one billion dollars was the appropriate and  
5 adequate amount. And that is what is considered.

6 Q. Thank you.

7 MR. HEIN: I have nothing else, Your Honor.

8 THE COURT: Thank you.

9 Anything further, Mr. Mervis?

10 MR. MERVIS: No, Your Honor.

11 THE COURT: Thank you, Mr. Chepenik. Your testimony  
12 is concluded. You are excused.

13 (At 10:37 AM, witness excused.)

14 MR. MERVIS: I'm sorry, Your Honor. I turned off  
15 prematurely. If, again, we could just have a few moments to  
16 shuffle personnel and bring our next witness on, it would be  
17 appreciated.

18 THE COURT: Yes. We'll wait.

19 MR. MERVIS: Thank you.

20 THE COURT: Thank you.

21 MS. DALE: Good morning, Your Honor. It's Margaret  
22 Dale from Proskauer Rose for the Oversight Board, and we are  
23 ready to proceed.

24 THE COURT: Thank you. Good morning, Ms. Dale.  
25 Please proceed.

1 MS. DALE: Thank you. We're calling our next  
2 witness, Your Honor, which is Juan Santambrogio. And Your  
3 Honor, before we swear the witness, we would move the  
4 admission of Mr. Santambrogio's declarations. His original  
5 declaration is at ECF no. 18736; the amended declaration is  
6 found at ECF no. 19054-07; and his supplemental declaration,  
7 Your Honor, was filed at ECF no. 19060.

8 We are unaware of any objections to the admission  
9 into evidence of these declarations, and we would move them in  
10 now.

11 THE COURT: Thank you.

12 If there is any objection, please raise your hand  
13 now.

14 Having seen no hands raised, and no objections having  
15 been filed, Mr. Santambrogio's declarations at 18736,  
16 19054-07, and 19060 are admitted into evidence.

17 (Whereupon the Santambrogio Declarations admitted  
18 into evidence.)

19 THE COURT: Good morning, Mr. Santambrogio.

20 THE WITNESS: Good morning, Your Honor.

21 THE COURT: Would the courtroom deputy please  
22 administer the oath?

23 COURTROOM DEPUTY: Please raise your right hand.

24 Do you solemnly swear that all the testimony you are  
25 about to give will be the truth, the whole truth, and nothing

1 but the truth?

2 THE WITNESS: I do.

3 COURTROOM DEPUTY: So help you God.

4 THE WITNESS: So help me God.

5 THE COURT: Thank you.

6 Mr. Hein, you may inquire.

7 MR. HEIN: Thank you.

8 J U A N S A N T A M B R O G I O,

9 called as a witness by the Debtors, having been sworn,  
10 testified as follows:

11 CROSS-EXAMINATION

12 BY MR. HEIN:

13 Q. I would like to start with questions about the AFSCME PSA  
14 that's discussed in your original declaration, so just  
15 focusing you on that period.

16 The AFSCME PSA was agreed in June of 2019; is that  
17 correct?

18 A. Yes.

19 Q. And it contemplated additional payments and benefits to  
20 public employees, as well as revisions of the Collective  
21 Bargaining Agreement with AFSCME, correct?

22 A. Yes.

23 Q. And in June of 2019, the Oversight Board agreed to the  
24 original 500 dollars per public employee signing bonus,  
25 correct?

1 A. Yes.

2 Q. And a five million dollar payment to AFSCME, which was to  
3 be disbursed as additional cash bonuses amounting to  
4 approximately 500 dollars per public employee in addition,  
5 correct?

6 A. Yes.

7 Q. And there is also five million dollars in addition to  
8 compensation AFSCME for its expenses, correct?

9 A. That is correct. It was to be contributed to a health  
10 care fund.

11 Q. And there was also then a payment of 2,600 per public  
12 employee into defined contribution accounts, correct?

13 A. That was -- there is a 2,600 dollar per participant that  
14 was employees hired before 2000, into their defined  
15 contribution accounts.

16 Q. And there was also provision for upside performance  
17 bonuses of 25 percent of the amount by which excess cash  
18 surplus exceeded 100 million dollars above the level in the  
19 fiscal plan in effect as of the effective date of the Plan,  
20 correct?

21 A. Yes.

22 Q. After you submitted your October 25 declaration, your  
23 first declaration, the Oversight Board has now, in the past  
24 two weeks or so, agreed to a -- 2,000 dollars per public  
25 employee per year for each of five years minimum of the upside

1 performance bonus, correct?

2 A. Yes.

3 Q. And so that would be for every public employee, there  
4 would be these payments of a minimum of 10,000 dollars over  
5 the next five years, correct?

6 A. For every AFSCME represented employee, there would be a  
7 2,000 dollar per year for five years.

8 Q. And certain other public employees will also receive the  
9 same?

10 A. No. That's not correct.

11 Q. Correct?

12 A. No.

13 Q. Only AFSCME?

14 A. Yes.

15 Q. The upside performance bonus amounts where excess cash  
16 surplus exceeds 100 million, those go to all public employees,  
17 correct?

18 A. No.

19 Q. Only AFSCME, that's your testimony?

20 A. No. It's AFSCME and other eligible public employees,  
21 mostly nonrepresented employees, excluding certain trust  
22 employees.

23 Q. But a much larger number than simply the AFSCME  
24 workforce?

25 A. It's a larger number.

1 Q. And other benefits to public employees under the AFSCME  
2 PSA included additional contributions to cover basic medical  
3 coverage, correct?

4 A. Yes.

5 Q. The ability to have an exclusive representative negotiate  
6 health and medical benefits and vote on health plan options,  
7 correct?

8 A. Yes.

9 Q. Expanded vacation and sick leave accruals, correct?

10 A. No. So the sick leave accruals were maintained. The  
11 vacation accruals were reduced for the most part, and the  
12 holidays were reduced as well.

13 Q. So in your declaration, you do refer to expanded vacation  
14 and sick leave accruals, correct?

15 A. I don't recall the exact wording I used, but it was --  
16 the vacation, yes, were modified and they were mostly  
17 reduced.

18 Q. Do you stand by what's in your declaration?

19 A. Yes.

20 Q. Let me ask it -- excuse me?

21 A. Yes.

22 Q. And there has not been any reduction since you agreed to  
23 your declaration October 25, 2021, correct?

24 A. No.

25 Q. That's going to be ambiguous. I asked you if it's



1 correct that there's been no reduction after you signed your  
2 declaration on October 25.

3 MS. DALE: Objection to the form of the question.

4 THE COURT: Ms. Dale, you are muted.

5 MS. DALE: Apologies, Your Honor. Objection to the  
6 form of the question. It's vague. No reductions of what?

7 THE COURT: Sustained. Please rephrase.

8 MR. HEIN: Sure.

9 BY MR. HEIN:

10 Q. With respect to the subject we are discussing, vacation  
11 and sick leave accruals, there's been no reduction in those  
12 accruals since you signed your declaration on October 25,  
13 correct?

14 A. Correct.

15 Q. And the PSA agreed to in June of 2019 confirmed that  
16 employees would still get all 15 paid holidays each year,  
17 correct?

18 A. Correct.

19 Q. So what we've gone through are costs to Puerto Rico,  
20 correct?

21 MS. DALE: Objection to the form of the question.

22 It's vague.

23 THE COURT: Sustained.

24 BY MR. HEIN:

25 Q. The different elements of bonuses and different benefits

1 that we've discussed are things that the government bears an  
2 economic cost to provide, correct?

3 A. Yes, for the most part.

4 Q. Has anyone gone through and aggregated what the total  
5 dollar amount of these costs are that are incurred as a result  
6 of the June 2019 PSA with AFSCME, and the subsequent agreement  
7 to provide the minimum of 2,000 in added bonuses per year for  
8 five years?

9 A. There were estimates for the individual components. I'm  
10 not aware of an aggregate amount.

11 Q. Has anyone, to your knowledge, calculated an estimate of  
12 the dollar amount or range of dollar amounts of potential  
13 upside performance bonuses above the 2,000 minimum that could  
14 be paid out at different levels of cash surplus greater than  
15 100 million dollars?

16 A. There were some illustrations that were prepared to  
17 quantify in a hypothetical situation what those payouts would  
18 be.

19 Q. And what was the highest hypothetical that was used?

20 A. I don't recall what the highest was.

21 Q. When pension restorations were part of the Plan, because  
22 there was still going to be a reduction in monthly pension  
23 benefits for retirees who had pensions above a certain level,  
24 was there a calculation or estimate of the potential benefit  
25 restoration amounts that would come from the ten percent of

1 excess cash surplus over 100 million?

2 A. No.

3 Q. That was never calculated or estimated?

4 A. Well, to be able to estimate it, you would need to have  
5 actual results, because the formula calls for a comparison  
6 between projected results and actual results. So since we  
7 don't have any actual results, we can't -- we can't estimate  
8 those payments.

9 Q. You could make different hypothetical assumptions as to  
10 what the actual might be, and then figure out what the cost is  
11 based on the hypothetical assumptions, correct?

12 A. Yes.

13 Q. That has not been done, correct?

14 A. Not to my knowledge.

15 Q. There were also modifications made to the collective  
16 bargaining agreements that the Oversight Board hopes will  
17 potentially save money, correct?

18 A. Correct.

19 Q. And the modifications that may save money are principally  
20 suspensions or modifications of provisions that make it  
21 difficult to lay off or terminate redundant employees,  
22 correct?

23 A. Correct.

24 Q. Did you or anyone else calculate the estimated or  
25 approximate fiscal savings to the Commonwealth under the new

1 collective bargaining agreements to be entered into as a  
2 result of the AFSCME PSA?

3 A. The fiscal plan includes fiscal measures, including  
4 agency right-sizing, and payroll freezes that are calculated  
5 or estimated for the entire workforce of the government. The  
6 fiscal plan does not have it detailed by union or by labor  
7 organization. So there are estimates of the overall savings  
8 to be achieved by the overall government through agency  
9 right-sizing and payroll freeze.

10 Q. And what are those estimates? What is the dollar amount  
11 of those estimates?

12 A. So those were prepared in 2019 with a base year of 2018.  
13 So comparing 2018 through fiscal '23, which is five years,  
14 those estimates are around a billion dollars.

15 Q. And what portion of the workforce does AFSCME's employees  
16 represent?

17 A. AFSCME representatives are spread throughout different  
18 agencies. I believe it's between ten and 15 agencies. Some  
19 of the ones that come to mind are the Department of Education,  
20 some administrative employees there; the Department of  
21 Corrections, correctional officers, for example; the  
22 Department of the Family; the Department of Transportation,  
23 are some of the examples.

24 Q. And has this order of magnitude estimate of potential  
25 savings that was done back in 2019, has that been updated in

1 the past two or two and a half years?

2 A. Well, the fiscal plan has been updated, so those fiscal  
3 measures in the fiscal plan would have reflected updates to  
4 those estimates.

5 Q. And can you put a number on it, based on the current  
6 fiscal plan?

7 A. I don't recall what the number is in the current fiscal  
8 plan.

9 Q. So is it realistic to think that one can hand out bonuses  
10 to AFSCME employees who are interspersed in these different  
11 agencies and not provide the same bonus to the worker whose  
12 desk is next door to someone who's getting a bonus? Has that  
13 been discussed?

14 A. Not to my knowledge.

15 Q. And, indeed, the bonuses have, at least some of them,  
16 been expanded to at least some other public employees,  
17 correct?

18 MS. DALE: Objection to the form of the question.  
19 It's vague.

20 THE COURT: Sustained. Please rephrase.

21 BY MR. HEIN:

22 Q. Some of the bonus components that we've gone over in your  
23 testimony have been extended to people who are not in the  
24 AFSCME union, correct?

25 A. If you're referring to the upside bonus, yes, that's

1 correct.

2 Q. Approximately what portion of the savings under the CBA  
3 with AFSCME were assumed from the 8.5 percent reduction in  
4 pension benefits above 1,200 dollars a month that was  
5 contemplated back in June of 2019, but has now been  
6 eliminated?

7 A. I don't know that number.

8 Q. On the subject of pensions, as part of your work, did you  
9 look at the levels of monthly pension benefits of individuals,  
10 groups of individuals, in particular, employee groups?

11 MS. DALE: Excuse me, Your Honor, and Mr. Hein. You  
12 broke up, Mr. Hein, during asking that question. Could you  
13 say it again, please?

14 MR. HEIN: Sure.

15 BY MR. HEIN:

16 Q. Did you look, as part of your work, at the level of  
17 monthly pension benefits of individuals in different employee  
18 groups?

19 A. I've seen -- I have seen those levels of benefits.

20 Q. And what are the highest levels of monthly pension  
21 benefits you've seen?

22 A. I don't recall what the maximum levels are.

23 Q. Can you put any order of magnitude on it, the maximum  
24 above 5,000?

25 A. I'm not sure. I know that there are -- there are

1 | benefits above 4,000, but I'm not -- I'm not sure about 5,000.

2 | Q. Are the pension benefits to Puerto Rican residents  
3 | subject to Federal Income Tax?

4 | A. My understanding is that they are not --

5 | Q. Are they --

6 | A. -- if they reside in Puerto Rico.

7 | Q. Are the pension benefits to Puerto Rico residents subject  
8 | to Puerto Rico income tax, if they reside in Puerto Rico?

9 | A. I'm not sure.

10 | Q. What portion of the pension recipients do not currently  
11 | reside in Puerto Rico?

12 | A. I do not -- do not know that number.

13 | Q. There is a proposed additional contributions to a pension  
14 | reserve trust. My question is, if you combine altogether all  
15 | of the agreed increases in funding to the pension trust, both  
16 | discussed in your declaration of October 25, as well as those  
17 | discussed in your supplemental declaration, what is the bottom  
18 | line in terms of the ultimate dollar amount of contributions  
19 | that will be made over the years to build up the pension  
20 | trust?

21 | A. Based on the fiscal plan projections, based on the  
22 | Certified Fiscal Plan projections, the amount before the  
23 | changes in the Eight Amended Plan was estimated to be 2.1  
24 | billion, and after the Eighth Amended Plan, 2.4 billion.

25 | Q. One last area that I wanted to ask you about. The PSA

1 signed with AFSCME in June of 2019 contemplated benefit  
2 reductions, pension benefit reductions of approximately 8.5  
3 percent for benefits above 1,200 dollars per month, correct?

4 A. Correct.

5 Q. And did anyone calculate what the savings would have been  
6 under that original agreement with AFSCME under which pensions  
7 would be reduced by 8.5 percent for benefits in excess of  
8 1,200 per month?

9 A. Can you be more specific?

10 Q. Yes. I'm just asking whether anyone made a calculation  
11 or estimation of the savings of those reductions to the Puerto  
12 Rico government?

13 A. Yes.

14 Q. And what was the savings that was contemplated from the  
15 pension benefit reductions in June of 2019?

16 A. So overall for the Commonwealth, those savings were  
17 estimated to be, over 30 years, around 2.7 billion.

18 Q. And they're after the threshold for reduction was  
19 increased to \$1,500, correct?

20 A. Correct.

21 Q. And thereafter, any reduction was eliminated, correct?

22 A. Correct.

23 Q. And, therefore, that 2.7 billion will not be saved,  
24 correct?

25 A. Correct.



1 MR. HEIN: Okay. Thank you. I have no other  
2 questions, Your Honor.

3 THE COURT: Thank you, Mr. Hein.

4 Ms. Dale, do you have any questions?

5 MS. DALE: I do not, Your Honor.

6 THE COURT: Thank you, Mr. Santambrogio. Your  
7 testimony is concluded, and you are excused.

8 THE WITNESS: Thank you.

9 (At 10:59 AM, witness excused.)

10 MS. DALE: Your Honor, may we have just a moment now  
11 to switch out for our next witness?

12 THE COURT: Well, I also see that your next witness  
13 has a scheduled cross-examination of 45 minutes, so what I  
14 propose is that we do the switching out during the break. So  
15 let's reconvene at 11:20. We'll take a 15-minute break.

16 MS. DALE: Thank you.

17 THE COURT: We are adjourned.

18 (At 10:59 AM, recess taken.)

19 (At 11:22 AM, proceedings reconvened.)

20 THE COURT: Good morning, everyone. We're back.

21 Is the Oversight Board ready with the next witness?

22 Good morning, Ms. Dale.

23 MR. BIENENSTOCK: Must have stopped my video.

24 MS. DALE: Good morning, Your Honor. One moment, and  
25 we're just going to --

1 MR. BIENENSTOCK: It says the host --

2 MS. DALE: So we're asking if the Court can open  
3 Mr. Bienenstock's video. We're getting a -- there it is.  
4 Wait. It was there, and then it was gone. There it goes.

5 THE COURT: No. It keeps flipping back.

6 MS. DALE: Hold on one moment, Your Honor.

7 THE COURT: Okay. Mr. Bienenstock is there and  
8 holding steady. Good morning, Mr. Bienenstock.

9 MR. BIENENSTOCK: Thank you, Your Honor. Good  
10 morning again.

11 The Oversight Board's next witness is Ms. Marti  
12 Murray. Ms. Murray is a bankruptcy and restructuring  
13 professional and financial advisor, whose expert  
14 qualifications and experience are detailed in her expert  
15 report, which is attached to her declaration. The expert  
16 report is ECF no. 18803-22. It's Debtors' Exhibit 112. The  
17 declaration and report are at ECF no. 18724-1. And the report  
18 has been admitted into evidence as Debtors' Exhibit 112.

19 Ms. Murray is offered as an expert to opine on the  
20 following issues: Whether implementation of the key financial  
21 elements of the Plan of Adjustment is consistent with the  
22 Fiscal Plan for Puerto Rico dated April 23, 2021, as certified  
23 by the Oversight Board; two, whether the proposed treatment of  
24 pension liabilities will not negatively impact Puerto Rico's  
25 ability to achieve the Fiscal Plan; three, whether

1 implementation of the Plan and achievement of the Fiscal Plan  
2 is dependant on new borrowings; and, four, whether certain  
3 settlements reached in connection with the Plan are  
4 reasonable.

5           The Court already has overruled certain objections  
6 that had been raised by the DRA parties to Ms. Murray's report  
7 and opinions. No other party, that is until last night, had  
8 raised any objection to Ms. Murray's qualifications or  
9 objection to her testimony.

10           Yesterday, however, Mr. Hein e-mailed his objection  
11 to Ms. Murray's opinion number four, where he stated he will  
12 object to its proffer on substantially the same grounds raised  
13 on November 10. Namely, he contends it's inappropriate for  
14 the Oversight Board to use affirmatively the alleged robust  
15 nature of the mediation and settlement process,  
16 notwithstanding that the Board has objected to any discovery  
17 of what transpired in that process; that there's no  
18 contemporaneous record of what transpired in that process; and  
19 that Mr. Hein was restricted from responding factually with  
20 respect to what occurred in that process by virtue of the  
21 confidentiality orders that the Court entered.

22           Mr. Hein acknowledged that he realizes the Court on  
23 December 10 rejected substantially the same objection, but he  
24 wants to reiterate it for the record. Also, he wants to  
25 object to the lack of foundation for Ms. Murray to comment on

1 the purported robust negotiation process. Mr. Hein did advise  
2 us that he does not object to Ms. Murray being tendered as an  
3 expert by the Oversight Board.

4 We submit, Your Honor, that Mr. Hein's objection to  
5 Ms. Murray's testimony should be overruled on at least two  
6 grounds. First, the objection is late. Mr. Hein did not  
7 provide his objection in his pretrial informative motion, ECF  
8 no. 18861, as required by the Court's Procedures Order, which  
9 is clear, because he did include his objection to the  
10 testimony of Mr. Jaresko and Messrs. Skeel and Zelin in that  
11 filing.

12 Second, the objection should be overruled for  
13 essentially the same reasons the Court overruled the same  
14 objection that Mr. Hein made to the testimony of Ms. Jaresko  
15 and Messrs. Skeel and Zelin on this point. In short,  
16 Ms. Murray is merely commenting on the negotiation process  
17 disclosed publicly, including with respect to the  
18 sophistication of the parties involved, who were assisted by  
19 lawyers and financial professionals. Ms. Murray was not even  
20 involved in the negotiations themselves and the mediation,  
21 and, therefore, cannot have confidential information of her  
22 personal knowledge that she's testifying to, and is not  
23 attempting to disclose any of it that she might have heard  
24 from other sources.

25 So, therefore, we think the objection should be

1 overruled. I'm sure Mr. Hein wants to speak for himself on  
2 this issue.

3 THE COURT: Thank you.

4 Mr. Hein.

5 MR. HEIN: I think Mr. Bienenstock accurately read  
6 the e-mail I sent, and I want to just make the objection for  
7 the record. I realize Your Honor ruled beginning with --  
8 before Ms. Jaresko's testimony. I think at that time Your  
9 Honor said that, for future witnesses, to raise it and put it  
10 in a brief way, referencing the prior discussion we had before  
11 Ms. Jaresko. I've been making this point, you know,  
12 repeatedly, and also had made it as a reservation with respect  
13 to the exhibit offer.

14 So I acknowledge Your Honor has addressed this. I  
15 just want to have my objection on the record.

16 THE COURT: Thank you.

17 As Mr. Bienenstock pointed out, this is a  
18 procedurally late objection, properly overruled for that  
19 reason, and also on the merits, for substantially the reasons  
20 stated in connection with the Jaresko and other declarations  
21 that were presented on November 10th, I believe, so my ruling  
22 was articulated on November 10th. Thank you.

23 MR. BIENENSTOCK: Thank you, Your Honor.

24 The Oversight Board offers Ms. Murray's declaration,  
25 ECF no. 18724, as her direct testimony, and asks that it be

1 admitted into evidence.

2 THE COURT: Ms. Murray's declaration at 18724-1 is  
3 admitted into evidence.

4 (At 11:29 AM, the Murray Declaration admitted into  
5 evidence.)

6 MR. BIENENSTOCK: Thank you, Your Honor. I'll be  
7 turning things over now to my partner, Margaret Dale.

8 THE COURT: Thank you.

9 Ms. Dale, is there anything further to discuss before  
10 I ask the courtroom deputy to administer the oath?

11 MS. DALE: No, Your Honor, there is not.

12 THE COURT: Would the courtroom deputy kindly  
13 administer the oath to Ms. Murray?

14 COURTROOM DEPUTY: Please raise your right hand.

15 Do you solemnly swear that all the testimony you are  
16 about to give will be the truth, the whole truth, and nothing  
17 but the truth?

18 THE WITNESS: I do.

19 COURTROOM DEPUTY: So help you God.

20 THE WITNESS: So help me God.

21 THE COURT: Thank you. You can put your hand down,  
22 and good morning.

23 THE WITNESS: Good morning, Your Honor.

24 THE COURT: Mr. Hein, you may inquire.

25 MR. HEIN: Thank you very much, Your Honor.

1 M A R T I P. M U R R A Y,

2 called as a witness by the Debtors, having been sworn,  
3 testified as follows:

4 CROSS-EXAMINATION

5 BY MR. HEIN:

6 Q. Ms. Murray, your Opinion No. 1 one is based on  
7 consistency of the 7th Amended Plan of Adjustment that was  
8 proposed at the time you prepared your September 13th expert  
9 report, and submitted your October 25th declaration that  
10 attaches your expert report, correct?

11 A. Correct.

12 Q. And that's also true of your Opinion No. 2?

13 A. Correct.

14 Q. And your Opinion No. 1, concerning consistency with the  
15 2021 Fiscal Plan, is specific to two particular topics,  
16 namely, up front cash needs, and sustainable debt service  
17 levels, correct?

18 A. Correct. Subtopics included.

19 Q. Yes. And your report relies on the April 23, 2021,  
20 fiscal plan, including the various data, including population  
21 data therein, correct?

22 A. It relies on the April 2021 certified fiscal plan.

23 Q. And your report discusses a time period extending through  
24 2051, correct?

25 A. Yes. That's correct.

1 Q. Did you do calculations of what the service would be on  
2 the new bonds in the period fiscal 2022 through fiscal 2046,  
3 basically the next 25 years?

4 A. I'm sorry. Can you repeat that question?

5 Q. Did you receive and review projections or forecasts of  
6 what debt service would be on the new bonds during the period  
7 fiscal 2022 through fiscal 2046, particularly the next 25  
8 years?

9 A. I reviewed information about the current interest bonds  
10 and the capital appreciation bonds.

11 Q. And that information provided what the debt service would  
12 be on those instruments?

13 A. Correct.

14 Q. In concluding that implementation of the Seventh Amended  
15 Plan of Adjustment will result in a level of future  
16 non-contingent debt service consistent with sustainable debt  
17 levels, you assume there will be no new debt issued by Puerto  
18 Rico during the period of time discussed in your expert  
19 report, correct?

20 A. Correct.

21 Q. As part of your work, you also analyzed prepetition debt  
22 service, correct?

23 A. I evaluated the prepetition debt service as part of the  
24 report.

25 Q. And the debt service amounts in Tables 3 and 4 of your



1 report include both amortization of principal and of interest,  
2 not just interest, correct?

3 A. May I refer to my report?

4 Q. Of course.

5 A. Could you repeat the question, please?

6 Q. Sure. The debt service amounts that you reference in  
7 Tables 3 and 4 of your report include, in the debt service,  
8 both amortization of principal and interest, not only  
9 interest, correct?

10 A. That's my understanding, yes.

11 Q. And you can tell that because the amortization of  
12 principal over the period of time that the bonds are  
13 outstanding trails off to virtually nothing in 2051, correct?

14 A. The prepetition debt service trails off.

15 Q. Correct. And the concept of amortization of principal of  
16 a bond is one where because the debt amortizes, the principal  
17 amortizes over the period that's outstanding, by the time you  
18 get to the end, the principal's amortized, there's nothing  
19 left to pay back, correct?

20 A. Yes, that's generally correct.

21 Q. The prepetition debt service referenced in your report  
22 includes not only PBA and GO bonds, but other debt that does  
23 not have the constitutional priority the GO Commonwealth  
24 guaranteed debt and the GO debt itself have, correct?

25 MS. DALE: Objection, calls for a legal conclusion.

1 THE COURT: Sustained.

2 MR. HEIN: Let me rephrase.

3 BY MR. HEIN:

4 Q. You're aware of the classes of debt, including GO debt,  
5 General Obligation debt? You are aware of that, correct?

6 A. Yes.

7 Q. And you're aware of the PBA, or Public Building Authority  
8 debt, correct?

9 A. Yes.

10 Q. And I'm not asking you to get into the legal arena, but  
11 there is other debt beyond the GO debt and the PBA debt that  
12 does not have assigned to it the same claim or priority that  
13 holders of GO and PBA debt claim. And, again, I'm not asking  
14 you to opine on the legal issue. I'm just trying to clarify  
15 that there are different types of debt than -- GO and PBA are  
16 one type, and there are other types as well.

17 A. There were other types of prepetition debt, yes.

18 Q. And the prepetition debt service that you reference in  
19 Tables 3 and 4 also appears in the Fiscal Plan, an exhibit to  
20 the Fiscal Plan itself, correct?

21 A. That's my recollection.

22 Q. And a note to that exhibit to the Fiscal Plan states that  
23 the debt service amounts include debt service not only for the  
24 GO and PBA, but the Fiscal Plan amounts and, therefore, the  
25 amounts in your Tables 3 and 4 also include debt service on

1 CCDA, PRIFA, PFC, and ERS, correct?

2 A. I'm sorry. I'm not sure I understand your question.

3 Could you rephrase it?

4 Q. Sure. The discussion of the debt service in the Fiscal  
5 Plan has a note to the table that explains that the debt  
6 service line that they have in the Fiscal Plan that you've  
7 also used in your Tables 3 and 4, that that debt service line  
8 includes not just debt service on the GO and PBA bonds, but  
9 also debt service on the CCDA, the PRIFA, PFC, and the ERS  
10 bonds, correct?

11 A. If you're asking me what a footnote in the Fiscal Plan  
12 says, I would want to refer to the Fiscal Plan.

13 Q. You should have with you a Debtors' Exhibit 10, which is  
14 the most current fiscal plan, and I can direct you to the  
15 specific page.

16 THE COURT: Mr. Hein, as you ask questions about  
17 tables in particular documents, would you please be specific  
18 as to the document you're referring to, the ECF number, and  
19 the page?

20 MR. HEIN: Sure.

21 THE COURT: Thank you.

22 BY MR. HEIN:

23 Q. This is Debtors' Exhibit 10. It's at ECF 18785-10. And  
24 the table is chapter 24, financial projections; 24.1, detailed  
25 financial projections. The page number at the bottom of the

1 page is 301, and the docket reference is page 302 of 307.

2 THE COURT: Thank you. 302 of 309?

3 MR. HEIN: I'm sorry. You're correct, Your Honor.

4 THE COURT: Thank you.

5 MR. HEIN: It's 302 of 309.

6 THE COURT: Thank you.

7 MR. HEIN: Thank you for pointing that out.

8 THE COURT: Thank you.

9 THE WITNESS: The exhibit has just been put before  
10 me. Can you please refer me again to the page?

11 BY MR. HEIN:

12 Q. Sure. So if you use the page numbers at the top, just  
13 flip to page 302 of 309. So it's at -- very close to the end.  
14 And you see footnote 2 there?

15 A. Yes.

16 Q. So they have the contractual debt service line there,  
17 correct?

18 A. Correct.

19 Q. And they're using the same numbers that you have in your  
20 Table 3, correct?

21 A. It looks to be that the contractual debt service payments  
22 line in Exhibit 154, which starts with the number 1749 in  
23 2022, matches my Table 3, prepetition debt service, which is  
24 line 2 under fiscal year 2022.

25 Q. And hoping your vision is better than mine, are you able

1 to read, or read into the record perhaps for the benefit of  
2 everybody, the first sentence of note 2?

3 A. Yes. "Debt service based on prepetition contractual debt  
4 obligations."

5 Q. And then I guess you need to go on to read the next  
6 sentence.

7 A. "Presented for illustrative purposes only, and does not  
8 represent anticipated future payments on restructured debt."

9 Q. Then the next sentence?

10 A. "Includes GO, PBA, CCDA, PRIFA, PFC, ERS."

11 Q. Thank you.

12 THE COURT: So, Mr. Hein, before we go on, the Table  
13 3 that has been referred to in Ms. Murray's report, which page  
14 of which ECF numbered document is that on, again, for clarity  
15 of the record?

16 MR. HEIN: Sure. It's docket -- I'm using docket  
17 18724, and it's page 31 of the report in the lower right-hand  
18 corner. Unfortunately, my copy is one where the docket  
19 numbers at the top of the page were kind of overwritten by a  
20 second set of the document numbers, which sometimes happens  
21 when one takes a document existing on file and refiles it.  
22 And so I can't really make out with certainty what the ECF  
23 page number is at the top of the page, but it's page 31 at the  
24 lower right-hand corner of the report.

25 THE COURT: Thank you. That's helpful. People can

1 compare the documents, but there are many Tables 3 and 4, and  
2 Figures 1 and 2 throughout the report. So, again, just please  
3 be as specific as possible for purposes of the record, even if  
4 you and Ms. Murray know that you're talking about the same  
5 thing.

6 MR. HEIN: Thank you, Your Honor.

7 BY MR. HEIN:

8 Q. Did you obtain information on what the current debt  
9 service on the -- prepetition contractual debt service, where  
10 the GO and PBA Bonds in particular is, as distinct from the  
11 debt service number that includes the CCDA, PRIFA, PFC, and  
12 ERS as well?

13 A. I don't recall doing that.

14 Q. Did you ask anyone for that information?

15 A. I can't recall.

16 Q. Would it be fair to say that for the next ten years,  
17 prepetition debt service on the GO and PBA bonds will average  
18 approximately 1.3 billion per year?

19 A. I couldn't answer that question without further analysis.

20 Q. Let me direct you to Debtors' Exhibit 31, which hopefully  
21 you have available. And this is Docket 18797-1. And I'm  
22 referring specifically to -- and again, there's an override of  
23 the docket numbers, but it's page 9 in the lower right corner.  
24 It's a table called, Overall Debt Drastically Reduced and Made  
25 More Affordable. It's in an Oversight Board presentation.

1 THE COURT: So is that page 9 in the right-hand  
2 corner, or page nine in the middle of the bottom, if that  
3 makes a difference?

4 MR. HEIN: I think you're correct, Your Honor. At  
5 least there's a page 9 at the bottom of the page, and I think  
6 there's also one in the lower right corner.

7 THE COURT: Thank you.

8 MR. HEIN: And they seem to be, fortunately,  
9 consistent.

10 THE COURT: And that seems to be -- for me, it's a  
11 document that has the number 18797-1 on the top, and the  
12 headline on it is, Overall Debt Drastically Reduced and Made  
13 More Affordable.

14 Is that what we're to be looking at?

15 MR. HEIN: Yes, that's exactly correct.

16 THE COURT: Thank you.

17 BY MR. HEIN:

18 Q. So, Ms. Murray, do you have the page in front of you?

19 A. Yes, I do. I note that this document was published after  
20 I filed my report.

21 Q. Okay. But do you see in the average debt service column,  
22 pre-PROMESA for the GO and PBA, it has 1.332 billion? Do you  
23 see that?

24 A. Yes, I do.

25 Q. And does that refresh your memory in any way that, as

1 part of your work, you learned that the GO-PBA debt service  
2 was -- at least the average for the first ten years was 1.332  
3 billion?

4 MS. DALE: Objection to the form. I don't think she  
5 testified to a failed recollection.

6 THE COURT: Please rephrase.

7 BY MR. HEIN:

8 Q. Looking at the 1.332 billion number for average debt  
9 service for the first ten years that appears on the document  
10 that has previously been identified, does that -- is that  
11 information you had or were provided as part of your work, the  
12 1.332 billion?

13 A. As I mentioned, this particular document was dated after  
14 I issued my report, so I did not have this particular document  
15 at the time I issued my report.

16 Q. Did you have a number for debt service for the GO and PBA  
17 bond specifically when you did issue your report? Is that  
18 something you received or obtained?

19 A. I don't recall one way or the other.

20 Q. Now, if you go back to your Table 4 -- and I'm going back  
21 now to ECF 18724, your declaration and attached report, and  
22 Table 4 is on the page numbered in the lower right corner page  
23 31 -- am I correct that the prepetition contractual debt  
24 service trails off to very modest amounts by the time one gets  
25 to 2042, and then trails off even further by 2051?



1 A. I don't know what you characterize as very modest  
2 amounts. The numbers decline.

3 Q. Thank you.

4 Let me focus on your Opinion No. 3. Your opinion  
5 number three assumes no new borrowings by the Commonwealth  
6 through 2051, correct?

7 A. I'm sorry. Can you repeat the question?

8 Q. Sure. I'm referring now to opinion three in your report,  
9 and my question is whether your Opinion No. 3, that borrowing  
10 lien restrictions incorporated into the Seventh Plan of  
11 Adjustment should not impede debtors' ability to achieve the  
12 2021 Certified Plan results, whether, for purposes of your  
13 Opinion No. 3, you are assuming no new borrowings during the  
14 period covered by your report through 2051?

15 A. Well, in reviewing the 2021 Certified Fiscal Plan, I note  
16 that that fiscal plan does not show a need for incremental  
17 borrowing.

18 Q. Is the answer to my question your opinion assumes there  
19 won't be new borrowings during the period?

20 A. My opinion reflects the fact that the Certified Fiscal  
21 Plan does not show a need for borrowing.

22 Q. And stated otherwise, you are not making any assumption  
23 that does include new borrowings for the period covered by  
24 your report, correct?

25 MS. DALE: Your Honor, it's Margaret, Margaret Dale.

1 I'm just going to object. Mr. Hein did not identify Opinion  
2 No. 3 as an area that he would inquire on on cross. He has  
3 asked a few questions, and we've let -- I've let him ask a few  
4 questions on this area, but I did want to let the Court know  
5 that he has not included that opinion as something for cross.  
6 And we did not prepare the witness on that area for cross.

7 MR. HEIN: Your Honor, this was the only question I  
8 had --

9 THE COURT: So this line of questioning is completed,  
10 Mr. Hein?

11 MR. HEIN: Yes. I just ask the witness to answer the  
12 question, but this was the end of that line of questioning.

13 THE COURT: All right. So will you restate your  
14 final question of this line, and I will permit the witness to  
15 answer, to respond to the question.

16 MR. HEIN: Thank you, Your Honor.

17 BY MR. HEIN:

18 Q. Your Opinion No. 3 does not make the assumption that  
19 there will be new borrowings during the period covered by your  
20 report, correct?

21 A. I'm sorry. I'm not understanding the question. If you  
22 could rephrase it for me, please.

23 Q. In your Opinion No. 3, you are not making an assumption  
24 that there will be new borrowings, correct?

25 A. I'm not making an assumption. I'm reviewing the

1 Certified Fiscal Plan to evaluate whether the Certified Fiscal  
2 Plan calls for any new borrowings.

3 Q. Thank you.

4 A. And I am noting that it does not.

5 Q. Thank you. Let me turn to opinion four.

6 Your Opinion No. 4 regarding the settlements and the  
7 settlement process is based on your review of materials in the  
8 public record, correct?

9 A. Correct.

10 Q. You did not personally observe any portion of the  
11 mediation or settlement negotiations, correct?

12 A. Correct.

13 Q. You did not personally attend any sessions, correct?

14 A. No, I did not.

15 Q. You understood that the settlement and mediation process  
16 was subject to court confidentiality orders, correct?

17 A. That's my understanding.

18 Q. Because of the court confidentiality records or orders,  
19 you were not able to review any contemporaneous record of what  
20 transpired, if there was such a record, correct?

21 A. There were reports filed by the mediation team that I was  
22 able to review.

23 Q. Apart from the reports filed by the mediation team, in  
24 terms of the particulars of the back and forth that occurred  
25 between the parties, you were not able to review any record of

1 that, correct?

2 A. I did not review any record of that apart from the  
3 reports from the mediation team.

4 Q. You were not able to interview participants to ask them  
5 what happened and what the back and forth was, correct?

6 A. I did not do so.

7 Q. Your report refers to recoveries under the Plan resulting  
8 from a robust negotiation process. You do not have any basis,  
9 in terms of your personal knowledge, for commenting one way or  
10 the other on whether the settlement discussions were robust,  
11 because you weren't there and haven't reviewed the back and  
12 forth that occurred, correct?

13 A. I don't agree with that.

14 Q. You did not know what the motivations of the different  
15 participants in the process were, correct?

16 A. I don't know that I can agree with that.

17 Q. Is there any party whose motivations you know out of  
18 personal knowledge, because you talked to them or they  
19 provided that information to you as to what their motivation  
20 or strategy in the discussions was?

21 A. Well, I think there's information about the motivations  
22 of the mediation team described in the reports that the  
23 mediation team filed with the Court.

24 Q. Apart from that.

25 A. Can you repeat the question, please?

1 Q. Sure. Apart from reading the written reports filed by  
2 the mediation team that are in the Court's docket, you never  
3 spoke to any of the mediators, correct?

4 A. Correct.

5 Q. And apart from simply reading those reports that are on  
6 file, you don't know what any of the particular participants  
7 negotiating or participating in that process were motivated  
8 by, correct?

9 A. I'm sorry. You froze towards the end of that question.

10 Q. Sure. Can you hear me better now?

11 A. I can hear you, yes.

12 Q. Great. Apart from reviewing what is filed in the public  
13 court record, the mediation reports, you don't have personal  
14 knowledge of what particular parties were thinking or  
15 proposing or responding during that process, correct?

16 A. Well, I have industry experience with respect to parties'  
17 desires to optimize their outcomes in such situations.

18 MR. HEIN: Respectfully, I'd move to strike that as  
19 non-responsive.

20 BY MR. HEIN:

21 Q. My question wasn't addressed to industry experience.  
22 I'll get to that in a minute. I just want a direct answer to  
23 my question about whether you had personal knowledge.

24 THE COURT: So the question was personal knowledge of  
25 what particular parties were thinking. The motion to strike

1 is granted. So you can ask the question again.

2 MR. HEIN: Sure. I'll repeat it again.

3 BY MR. HEIN:

4 Q. Do you have personal knowledge of what the particular  
5 parties in this case, participating in the settlement  
6 mediation process, were strategizing or their motivations or  
7 what the back and forth was?

8 A. No.

9 Q. Now, let's turn to other situations.

10 Have you personally participated in mediations in  
11 other cases? And, again, I'm focusing on whether you  
12 personally participated.

13 A. Yes.

14 Q. And how many other cases?

15 A. Sitting here today, I can recall at least one.

16 Q. Can you identify that?

17 A. Yes. It was a matter involving Exide Corporation.

18 Q. Sorry. I didn't catch the name.

19 A. Exide Corporation.

20 Q. And in what capacity did you personally participate?

21 A. My investment management firm, Murray Capital Management,  
22 was a plaintiff in a litigation against Exide.

23 Q. And was this a bankruptcy situation or was it simply a  
24 litigation?

25 A. It was a litigation.

1 Q. And were there multiple parties, just -- or just your  
2 company and the defendant?

3 A. I can't recall.

4 Q. Have we now exhausted your recollection of mediations  
5 that you've personally participated in, this one that you've  
6 described?

7 A. Can you be more specific with respect to your use of the  
8 term "mediation"?

9 Q. Let me just give you what I would view as a thumbnail.  
10 Court process, such as we're engaged in now, all of the  
11 parties are present, (inaudible) a judge who makes decisions.  
12 There's an arbitration process that (inaudible) typically --

13 THE COURT: Mr. Hein. Mr. Hein, I need you to back  
14 up to the beginning of that thumbnail, because you froze in  
15 the middle of it.

16 MR. HEIN: Can you hear me now, Your Honor?

17 THE COURT: Yes, I can. Thank you.

18 BY MR. HEIN:

19 Q. So -- and just to try to clarify and focus my question, I  
20 guess, with the Court's indulgence, I will provide a thumbnail  
21 of judicial court proceedings, arbitration, and mediation just  
22 to help illustrate the contrast that I am assuming for  
23 purposes of my question.

24 Court proceedings, all of the parties to the case are  
25 present, are entitled to be present. A judge presides and

1 makes decisions that bind the parties. In arbitration,  
2 typically it's like a court proceeding, where all of the  
3 parties are present, an arbitrator or a panel of arbitrators  
4 makes decisions that typically bind the parties.

5 Mediation is different. Mediation is a voluntary  
6 process where the parties will meet with the mediator, and  
7 aren't bound by any decisions by the mediator. The mediator  
8 doesn't typically make decisions. And unlike a court process  
9 or an arbitration process, in a mediation, the mediator can  
10 speak privately to the different parties.

11 Does that help you?

12 A. Yes. Thank you.

13 Q. So with that clarification, are there any -- let me first  
14 ask you of the case you described, where your company was the  
15 plaintiff, and Excide was the defendant. Was that a case  
16 where you were dealing with the mediator who kind of shuttled  
17 between the parties, and was not making binding decisions, but  
18 simply trying to help the parties reach a settlement among  
19 themselves?

20 A. Yes. It's Exide, E-x-i-d-e.

21 Q. Okay. Thank you.

22 So with that clarification, are there any other  
23 mediations that you recall personally participating in?

24 A. Yes.

25 Q. And what are those?



1 A. I participated in a mediation for an entity referred to  
2 as SW Boston.

3 Q. In what capacity did you participate?

4 A. I participated in the capacity of financial advisor to  
5 one of the parties in a bankruptcy.

6 Q. Did you attend actual mediation sessions?

7 A. Yes.

8 Q. And how many approximately?

9 A. As I recall, there was one.

10 Q. And was this a case with a number of different parties,  
11 or just a small number of parties?

12 A. I don't know what you mean.

13 Q. How many parties were there involved in this particular  
14 mediation matter with SW Boston?

15 A. Directly in the mediation, there were two parties.

16 Q. So have we now exhausted your recollection of personal  
17 participation in mediation?

18 A. Those are the two I recall sitting here today. There may  
19 be others.

20 Q. So specifically, just to follow up, have you had the  
21 experience of participating in mediation in the context of a  
22 large municipal or other governmental entity in bankruptcy?

23 A. No.

24 Q. Have you had the personal experience of participating in  
25 mediation in the context of a large corporate bankruptcy?

1 A. Yes.

2 Q. And was that the SW Boston?

3 A. Yes.

4 Q. Other than SW Boston, have you had the personal  
5 experience of participating in mediation in the context of a  
6 large corporate bankruptcy?

7 A. I can't recall with specificity sitting here today.  
8 There may have been others.

9 Q. Thank you.

10 In the two mediation experiences that you handled --  
11 withdraw that.

12 You have identified two mediation experiences.  
13 You've described them, and I believe you said that in each  
14 case, there were two parties, correct?

15 A. That's my recollection. There may have been more.

16 Q. So in those cases, the two cases you personally had  
17 experience with, did the mediator meet privately with  
18 different parties during the course of the day, or during the  
19 course of the session?

20 A. Yes.

21 Q. And so the mediator could spend more time with one party  
22 than another, correct?

23 A. I can't recall.

24 Q. Was there any -- withdraw that.

25 In particular, when -- with respect to your

1 involvement in the mediation, there were times when you would  
2 be in a room, perhaps with lawyers or others, where the  
3 mediator was often in a different room with the other party,  
4 correct?

5 A. Yes.

6 Q. And so in the course of even your personal experience,  
7 these two mediations, each of which involved two parties,  
8 things were going on in other rooms where you didn't know what  
9 was happening, correct?

10 A. I didn't know what was being discussed with any  
11 specificity, correct.

12 Q. So let me now turn to the question of commercial  
13 reasonableness. You offer an opinion that you see no  
14 commercially reasonable basis to upset the balance reached as  
15 part of the mediation settlement process, correct? That's  
16 your offered opinion?

17 A. Can you direct me to the paragraph in my report to which  
18 you're referring?

19 Q. Well, I have reference to page 73, paragraph 136, but I  
20 don't mean to put words in your mouth. And if that's not your  
21 opinion, or you don't recall that as an opinion, I respect  
22 that, and don't want to -- I'm not trying to put words in your  
23 mouth.

24 A. Well, I just wanted to refer to where you were looking in  
25 my report. And what my report says is that, I would see no

1 commercially reasonable basis to upset the balance that has  
2 been reached when the parties representing the economic  
3 interests at stake have agreed to the compromises incorporated  
4 into the terms of the plan.

5 Q. Okay. And you're now referring to page 73 in the lower  
6 right-hand corner of your report, which is included in docket  
7 18724, and you're specifically -- you read the last sentence  
8 of paragraph 136, correct?

9 A. Correct.

10 Q. Thank you.

11 You are not opining here on the legal  
12 appropriateness of the settlement, correct?

13 A. No. I'm not offering a legal opinion.

14 Q. And you are not opining here based on what actually  
15 occurred in the mediation that you were not at, correct?

16 A. I'm opining on the outcome, the holistic outcome of the  
17 mediation.

18 Q. Thank you.

19 Final topic. You attached Dr. Wolfe's report to your  
20 report, correct?

21 A. Could you direct me to that, please?

22 Q. You know, it may be that I just erred in my review of  
23 what was in the docket and thought the two were connected.

24 Let me just ask you, without any representation, did  
25 you attach Dr. Wolfe's report to your report?

1 A. No.

2 Q. Okay. Then that's fine. That was my mechanical  
3 misinterpretation.

4 So thank you very much. I have no further  
5 questions.

6 THE COURT: Thank you, Mr. Hein.

7 Ms. Dale, do you have any questions for Ms. Murray?

8 MS. DALE: I do, Your Honor. Very short.

9 REDIRECT EXAMINATION

10 BY MS. DALE:

11 Q. Ms. Murray, if I could direct you to your report,  
12 paragraph 114, which is on page 61 in the bottom right-hand  
13 corner of the report.

14 Ms. Murray, are you there? I can't see you.

15 A. Yes, I am.

16 Q. Okay. Thank you very much.

17 Ms. Murray, what is your basis for the statement in  
18 the first sentence of paragraph 114 that says "the relative  
19 recoveries under the Plan resulted from a robust negotiation  
20 process that also reflected risks associated with certain  
21 litigations between and among the stakeholders?"

22 A. That -- the basis for that opinion is my experience as an  
23 industry practitioner in bankruptcy and restructuring, and my  
24 observation about the process by which the negotiations  
25 proceeded.

1           This case has been ongoing for four and a half years.  
2     It has involved highly sophisticated parties, represented by  
3     very experienced lawyers, and financial advisors.

4           There has been court-appointed mediation. There had  
5     been reports that had been issued by the mediation team that  
6     reflect substantive negotiations between the parties. There  
7     are multiple legal issues that had to be addressed in this  
8     case. And there were many, many parties that had to be  
9     brought on board. And the fact that all of these parties have  
10    agreed to move forward with this particular plan, in my  
11    opinion, in and of itself is evidence of a robust negotiation  
12    process.

13           MS. DALE: Thank you. I have no other questions.

14           THE COURT: Thank you.

15           Mr. Hein, any further questions?

16           MR. HEIN: Just a brief follow-up.

17                        RE CROSS-EXAMINATION

18     BY MR. HEIN:

19     Q. Do you know, in terms of your personal knowledge, whether  
20     every creditor was personally involved in active negotiation  
21     of the Plan?

22     A. I do not.

23           MR. HEIN: Thank you. No other questions.

24           THE COURT: Thank you, Mr. Hein.

25           Anything further, Ms. Dale?

1 MS. DALE: No, Your Honor.

2 THE COURT: Thank you, Ms. Murray. Your testimony is  
3 concluded, and you are excused.

4 THE WITNESS: Thank you, Your Honor.

5 (At 12:12 PM, witness excused.)

6 THE COURT: So, Ms. Dale, we have a transition to the  
7 next witness?

8 MS. DALE: Yes, Your Honor. If you could just give  
9 us one minute. Thank you very much.

10 THE COURT: Sure. Let us know when you're ready.

11 MS. DALE: Yes, ma'am.

12 MR. ROSEN: Good morning, Your Honor. Brian Rosen.  
13 I think we're ready to proceed.

14 THE COURT: Very well. Good morning, Mr. Rosen.

15 MR. ROSEN: Good morning, Your Honor.

16 At this time, Your Honor, we would like to present  
17 Mr. David Brownstein as our next witness. We have submitted  
18 two declarations on behalf of Mr. Brownstein, an original  
19 declaration and an amended declaration. The amended, of  
20 course, was only with respect to the inclusion of certain  
21 exhibits. The ECF numbers for these, the original declaration  
22 was 18726, and the amended declaration was ECF no. 19054-01.

23 At this time, Your Honor, we would like to offer  
24 those two declarations into evidence.

25 THE COURT: Is there any objection? If so, raise

1 your hand.

2 Seeing no objections and none having been filed, the  
3 two declarations at 18726 and 19054-01 are admitted in  
4 evidence.

5 (Whereupon the Brownstein Declarations admitted into  
6 evidence.)

7 MR. ROSEN: Thank you very much, Your Honor. At this  
8 time, I would like to pass the microphone over to my  
9 colleague, Mr. Firestein, and present the witness,  
10 Mr. Brownstein, to you.

11 THE COURT: Thank you.

12 Good morning, Mr. Brownstein.

13 THE WITNESS: Good morning, Your Honor.

14 THE COURT: Actually, it's afternoon where I am, so  
15 I'll say good afternoon to you as well.

16 THE WITNESS: Buenas tardes.

17 THE COURT: Buenas tardes.

18 I will ask the courtroom deputy to administer the  
19 oath.

20 COURTROOM DEPUTY: Please raise your right hand.

21 Do you solemnly swear that all the testimony you are  
22 about to give will be the truth, the whole truth, and nothing  
23 but the truth?

24 THE WITNESS: I do.

25 COURTROOM DEPUTY: So help you God.



1 THE WITNESS: So help me God.

2 THE COURT: Thank you, Mr. Brownstein. You can put  
3 your hand down.

4 Mr. Hein, you may inquire.

5 MR. HEIN: Thank you, Your Honor.

6 D A V I D B R O W N S T E I N,  
7 called as a witness by the Debtors, having been sworn,  
8 testified as follows:

9 CROSS-EXAMINATION

10 BY MR. HEIN:

11 Q. Mr. Brownstein, you state that a request for the IRS to  
12 issue a private letter ruling or closing agreement related to  
13 the tax exempt status of the new GO bonds has been prepared,  
14 correct?

15 A. Yes. To be clear, or a closing agreement, right? I  
16 just -- I didn't hear you. You froze for a moment there.

17 Q. Sure. Yes. It would be either a request for a private  
18 letter ruling or a closing agreement?

19 A. Correct.

20 Q. Thank you.

21 And when did the work to prepare that request begin?

22 A. I can't tell you an exact date. I wouldn't recall. But  
23 it's been going on for some time now.

24 Q. And who are the people principally involved in this  
25 effort?

1 A. The tax attorneys representing both AAFAF and the Board  
2 who've been involved.

3 Q. And are there any parties other than those associated  
4 with the Oversight Board and AAFAF who have participated or  
5 whose attorneys have participated? For example, (inaudible)  
6 receiving drafts of communications --

7 THE COURT: Mr. Hein, you'll have to repeat that  
8 question again from the beginning, because the signal broke  
9 up.

10 MR. HEIN: Sure. Thank you.

11 BY MR. HEIN:

12 Q. Apart from the Oversight Board, and AAFAF, and their  
13 legal advisors, and financial advisors, have there been  
14 communications with other parties about the preparation of  
15 this request for a private letter ruling or closing agreement?

16 A. Other than with me, Mr. Hein, no, not that I'm aware of.

17 Q. Okay. And then speaking in terms of communications  
18 you've had, who have you had communications with on the  
19 subject other than AAFAF, and the Oversight Board, and their  
20 legal and other advisors?

21 A. My communications have only been with them, sir.

22 Q. Okay. And are you aware of anyone else having  
23 communications with other parties on this subject?

24 A. No, I am not.

25 Q. Thank you.

1                   Is the request to the IRS for the private letter  
2   ruling or closing agreement relating to tax exempt status  
3   substantially complete?

4   A.   My understanding is it has been filed.

5   Q.   And do you recall when it was filed?

6   A.   I don't know the exact date, no.

7   Q.   Approximately?

8   A.   I don't know the exact date. I don't know approximately  
9   when either. Just that it has been filed.

10   Q.   Does the request to the IRS to seek tax exempt status  
11   seek tax exempt status for all of the new GO bonds?

12   A.   Can you repeat and restate your question? I'm not sure I  
13   understand what you mean by all GO bonds.

14   Q.   So there are new GO bonds that are proposed to be issued  
15   here, correct?

16   A.   Yes. There are several different GO bonds to be issued  
17   here.

18   Q.   And is the request to the IRS to issue a private letter  
19   ruling or closing agreement a request that seeks tax exempt  
20   status for all the new GO bonds to be issued?

21   A.   No, it does not.

22   Q.   What bonds does it not seek that status with respect to?

23   A.   For the contingent value instruments.

24   Q.   So let me exclude for this line of questioning the  
25   contingent value instruments, focus you on the coupon bonds

1 and the capital appreciation bonds.

2 With respect to the coupon and capital appreciation  
3 bonds, does the request for tax exempt status apply to all of  
4 the new GO bonds that are contemplated?

5 A. Yes.

6 Q. Does the request to the IRS set forth that the principal  
7 amount of the new bonds will be less than the principal amount  
8 of existing and outstanding GO and PBA bonds that were  
9 previously issued as federally taxable?

10 A. I'm sorry. I don't understand at all your question. Can  
11 you rephrase it for me?

12 Q. So you have previously issued and still outstanding bonds  
13 issued by GO -- issued by the Commonwealth or the PBA, some of  
14 which, some small portion of which were federally taxable; is  
15 that correct?

16 A. I believe approximately 13 percent of the outstanding  
17 debt is federally taxable.

18 Q. And, as you understand it, is one of the points made in  
19 the request that all of the new GO bonds be tax exempt, that  
20 the new principal amount for the new bonds will be less than  
21 the principal amount of existing and outstanding GO bonds and  
22 PBA bonds that are tax exempt, i.e., the 87 percent?

23 A. I'm still -- I'm not understanding your question, sir.

24 Q. Okay. So in terms of the existing and outstanding bonds,  
25 approximately 13 percent of the existing and outstanding GO

1 and PBA bonds were federally taxable when they were issued,  
2 correct?

3 THE COURT: Mr. Hein, you'll need to repeat that  
4 because the signal broke up again.

5 BY MR. HEIN:

6 Q. In terms of the existing and outstanding GO and PBA  
7 bonds, approximately 13 percent of them were issued originally  
8 as federally taxable, correct?

9 A. That is correct.

10 Q. And that means that 87 percent of the currently  
11 outstanding GO and PBA bonds were originally issued as tax  
12 exempt, correct?

13 A. That is correct.

14 Q. And what is the approximate principal amount of that 87  
15 percent?

16 A. I don't have that number with me.

17 Q. Is one of the points made to the IRS that the principal  
18 amount of the new GO bonds will be less than the aggregate  
19 principal amount of that 87 percent?

20 A. That is one of the arguments used as to why the IRS  
21 should be willing to provide guidance on tax exemption for the  
22 new issue, correct.

23 Q. And, indeed, that same argument was made in the COFINA  
24 case and was successful, correct?

25 A. That is correct.

1 Q. Are there additional alternative grounds advanced for why  
2 the new bonds should be tax exempt?

3 A. The letter request tells all of the facts of the existing  
4 debt that are known at this time.

5 Q. You were personally involved in the efforts to obtain tax  
6 exempt status for COFINA bonds, correct?

7 A. Yes, sir.

8 Q. And so you have the benefit of that experience and your  
9 views as to the current request, correct?

10 A. I know the facts of the COFINA transaction and what the  
11 service ultimately said, yes.

12 Q. And in the *COFINA* case, likewise, the request was that  
13 all bonds be tax exempt, and that was granted, correct?

14 A. Correct. It was granted.

15 Q. And the current request of the IRS with respect to the  
16 new GO bonds is, in essence, following that same template,  
17 correct?

18 A. Generally correct.

19 Q. Was there any consideration given here to simply doing an  
20 exchange, whereby those holders who held bonds that were  
21 issued as taxable would get new bonds that were taxable, and  
22 those holders who held bonds, the originally issued bonds that  
23 were tax exempt would receive new bonds that were tax exempt?

24 A. Everyone has an alike claim, whether they own a short  
25 bond, long bond, taxable bond, or tax exempt bond, so no.

1 Q. Now, my question I think was whether that was considered  
2 or discussed. Was it considered or discussed?

3 A. No.

4 Q. Some of the parties who participated in the negotiation  
5 of the structure of the new bonds hold taxable bonds, correct?

6 A. It's possible they do, yes. I don't know for a fact.

7 Q. If one holds taxable bonds, one receives a benefit if one  
8 is able to exchange those taxable bonds for tax exempt bonds  
9 on the same basis that someone who holds tax exempt bonds can  
10 make their exchange, correct?

11 A. Again, their claim is a like claim. Based on that, yes.

12 Q. Let me turn to -- withdraw that.

13 From the point of view of current holders of taxable  
14 bonds, the proposed structure offers them the opportunity, if  
15 you're successful, as you were, or the Oversight Board was in  
16 the *COFINA* case in getting all bonds tax exempt, it offers the  
17 alternative or the opportunity for holders of taxable bonds  
18 today to end up with taxable bonds after the exchange,  
19 correct?

20 A. You mean -- I believe what you meant to say was to end up  
21 with tax exempt bonds.

22 Q. Let me restate the question. If I misspoke, my  
23 apologies.

24 The proposed structure that is seeking tax exempt  
25 status for all of the new bonds, as was successful in the

1 COFINA case, will offer someone who currently holds taxable  
2 bonds the added benefit of receiving, in exchange, new bonds  
3 that are tax exempt, correct?

4 A. I -- no. That -- I'm sorry. Your question doesn't make  
5 any sense to me.

6 Q. Okay. Someone who currently holds taxable bonds,  
7 assuming the Oversight Board is successful in its request to  
8 have all new bonds be tax exempt, as was the case in the  
9 COFINA situation, that current holder of originally issued  
10 taxable bonds will end up in the exchange with tax exempt  
11 bonds, correct?

12 A. No. Every -- again, as I stated before, everyone has a  
13 like claim, so everyone will be receiving both taxable and tax  
14 exempt bonds, whether today they own tax exempt or taxable  
15 bonds, so that in the end here everyone will be the  
16 beneficiary of the ruling, if we get one from the service.

17 Q. And let me just perhaps be more clear. My question was  
18 premised on your being successful in getting a ruling that all  
19 new GO bonds can be tax exempt. Do you follow me? Can you  
20 accept that premise for my question?

21 A. No, because the first part of your question states it  
22 very differently, that someone isn't entitled to a pro rata  
23 share today of tax exempt bonds either -- whether we get the  
24 ruling or not.

25 Q. So I'm not intending in the question any judgment or the



1 | like. I'm just trying to factually understand. If the ruling  
2 | is that all new bonds are tax exempt -- you're with me for  
3 | that part of the question, correct?

4 | A. Yes.

5 | Q. If all new GO bonds are tax exempt, everybody who  
6 | currently holds bonds, whether they're taxable or not taxable,  
7 | will be receiving all tax exempt bonds, correct?

8 | A. If the ruling were to state that all of the refunding  
9 | bonds were tax exempt, the answer would be yes.

10 | Q. Yes. Thank you.

11 | Now let me turn to a different subject. One option  
12 | for the newly issued bonds would be to issue term bonds with a  
13 | sinking fund, so that principal could be amortized if the  
14 | number of individual CUSIPs issued could be reduced or kept to  
15 | a minimum, correct?

16 | A. While that wouldn't be in the interest of any bondholder,  
17 | that would be an option, correct.

18 | Q. Were there benefits to some of the funds with major  
19 | holdings who negotiated the Plan to have a multiplicity of new  
20 | CUSIPs issued in exchange for each existing CUSIP?

21 | A. The structure was created by Citi, as representative of  
22 | the Board, to provide all holders with as significant a  
23 | recovery as we could, within the boundaries of what the Board  
24 | was comfortable as annual debt service being. So while there  
25 | were discussions with the participants in mediation as to the

1 structure that Citi was proposing, that proposal was driven by  
2 what was in the best interest of all bondholders in getting  
3 them the highest recovery possible within the boundaries of  
4 the municipal market.

5 Q. Were there benefits to the Commonwealth of issuing a  
6 multiplicity of different CUSIPs in exchange for each existing  
7 CUSIP?

8 A. Not that I can think of.

9 Q. For individual retail investors with modest-sized  
10 holdings, whether it's someone with a CUSIP that's 100,000  
11 par, or in some cases individuals may have as little as 5,000  
12 par of a particular CUSIP, correct?

13 A. Yes.

14 Q. For an individual with a CUSIP that is 100,000, or  
15 25,000, or 10,000, or 5,000, they are going to be receiving 12  
16 separate CUSIPs for each existing CUSIP, correct?

17 A. Well, I want to correct you. They will be receiving in  
18 total 13 CUSIPs to replace their existing holdings that are  
19 all in one account. So if an individual has an account solely  
20 in their name, all of their bonds will be exchanged in for new  
21 bonds that will have 13 CUSIPs. No more.

22 Q. So if someone hypothetically has an account with broker  
23 A, and with broker A they have four different CUSIPs, some  
24 PBA, some GO, are they going to get 13 times four, or are they  
25 going to get just 13?

1 A. You froze there.

2 Q. Okay. Yes. Mr. Brownstein, can you hear me now?

3 A. Yes.

4 Q. Let me just back up for the sake of clarity.

5 In the *COFINA* case, someone who had four CUSIPs, and  
6 they could be simply different maturities in the same series,  
7 or different series, someone with four CUSIPs, even at the  
8 same broker, would end up with four times 14, or whatever the  
9 number of CUSIPs were there -- I believe it was 14 -- is that  
10 correct?

11 A. I don't believe so, no. Their custodian would have  
12 received back a portfolio that included all 14 CUSIPs; and  
13 would have pulled out of that account the four CUSIPs they  
14 owned, and put into that individual account the 14 replacement  
15 CUSIPs. Not four times. I wouldn't -- that wouldn't -- that  
16 just doesn't fit within how the market works.

17 Q. So if -- let me ask you hypothetically, if hypothetically  
18 I could show you that that's what happened at at least two  
19 different brokerage firms, where one got 14 CUSIPs for every  
20 existing CUSIP, you would say that that was not the way it was  
21 supposed to work?

22 A. Again, if you have an account, to be clear, Mr. Hein,  
23 that what is -- let's say you have an account with one CUSIP  
24 in it, just start there, at UBS, your broker, you will receive  
25 back 13 CUSIPs to replace that one CUSIP.

1           If you have two accounts at UBS that are different  
2 account numbers, because one's in your and your wife's name,  
3 as an example, that will receive separately 13 CUSIPs as an  
4 exchange for its existing portfolio. There are only 13  
5 CUSIPs, or in the case of COFINA, as you noted, 14. So once  
6 they're in your portfolio, there are only 14 CUSIPs.

7           They can't give you four times 14. They just gave  
8 you -- instead of a 5,000 bond in one CUSIP, they gave you  
9 20,000 in that single CUSIP. There are no additional CUSIPs  
10 above the 14, so, theoretically, it's impossible, but I'm  
11 happy to evaluate that with you.

12 Q. Take your situation where someone -- let's say someone  
13 has 100,000 par, one CUSIP.

14 A. Yes.

15 Q. And they're going to get 13 different CUSIPs, one being  
16 the CVI, correct?

17 A. I believe the 13 I'm talking about, but I can't recall,  
18 exclude the CVI, but I'll have to check on that.

19 Q. Whether it's 13, or 13 plus the CVI, would you agree  
20 that, from the point of view of the retail investor, there's a  
21 reduction in their liquidity on a practical level in terms of  
22 their ability to sell bits or pieces of these different 13  
23 CUSIPs that they've received?

24 A. No. I disagree with that statement.

25 Q. And why do you disagree?

1 A. So the purpose of going from your question on a term bond  
2 to 13 serials is to take advantage of the fact that the  
3 municipal market has an upward sloping yield curve, and what  
4 that means is if we gave you one term bond, which is priced to  
5 maturity of the bond, and doesn't take into account the yield  
6 curve, because we don't price in the municipal market to  
7 average life, we price to maturity or call, what that means is  
8 the principal amount of bonds that you would have received day  
9 one, whether you owned 100,000 -- take 700,000 as an example,  
10 where you will be receiving back 300,000 in bonds, plus cash.  
11 So let's take that 300,000, where now you're receiving 23,000  
12 of each of the 13 maturities, or 300,000 of one term bond.  
13 The amount of proceeds we were able to generate for you  
14 through the serial fracture increased your recovery by two and  
15 a half percent of par.

16 The question is whether, if you sold each of your  
17 bonds day one, which is not what I solved for -- I solved for  
18 giving you the most amount of proceeds, right? If you sold  
19 them all, what I assure you is that the liquidity charge  
20 versus the 23,413 versus the 300,000 as one maturity, would be  
21 significantly lower.

22 So, in other words, the total amount of value you  
23 would receive would still be significantly greater. That is  
24 what the Board charged us to solve for, which is what we  
25 solved for. So your base premise is wrong.

1 Q. Let me just clarify. So what you're saying is you  
2 believe the value of the structure that you have proposed, and  
3 the Plan proposes, provides an additional two and a half  
4 percent of par in value, correct?

5 A. I believe I said two and a quarter, but yes.

6 Q. Yeah. And you believe that two and a quarter percent of  
7 par is significant?

8 A. Is significantly greater than the lack -- the  
9 differential in liquidity in -- and if you went to sell all of  
10 those bonds day one, then the liquidity you would be charged  
11 because of having a smaller par amount. So yes, net, you come  
12 out ahead, no matter whether you own one bond or more.

13 Q. And just, can you tell us, in general terms, what the  
14 liquidity charge would be under those circumstances?

15 A. Well, each retail brokerage firm charges different  
16 liquidity charges, but as I think you are aware, they now bid  
17 out of all of those holdings to other market participants.  
18 And I can never give you, on any given day, what that is per  
19 bond, but what I would tell you, in this instant, today I  
20 believe the differential is less than half a percent of par,  
21 versus the two and a quarter percent in gain we provided you  
22 in structure.

23 Q. So what you're saying is that basically there'd be a net  
24 gain of one and a half to one and three-quarters of one  
25 percent; is that correct?

1 A. Today, correct.

2 Q. And you view that as significant?

3 A. I view that as significant, because we're talking about  
4 trying to increase your recovery in any way we can, so yes.

5 Q. Thank you. Let me just turn briefly to a couple other  
6 subjects that I want to cover.

7 A. Of course.

8 Q. There's a taxable election for Puerto Rico investors.  
9 You're familiar with that feature?

10 A. Yes, I am.

11 Q. Is it contemplated that if the IRS concludes all bonds  
12 can be tax exempt, the Puerto Rican investors will still get  
13 the single maturity 2041 with the five percent coupon, and  
14 then have a tax exempt bond with those attributes?

15 A. To the extent we get a ruling that covers all the bonds,  
16 and we get it prior to settlement, yes, that would potentially  
17 be the case.

18 Q. And by that, what do you mean? That the --

19 A. Let's talk through the reason we did this, so you  
20 understand. The fact is that for every bond that you get  
21 that's tax exempt instead of taxable, if you're a mainland IRS  
22 taxpayer -- all right. So let's take an example. If you  
23 have -- there were 49 million in bonds that were taken by the  
24 on-island investors in -- as taxable bonds, and that results  
25 in gains --

1 (Sound played.)

2 A. -- if you will, for those investors of about five percent  
3 of par in cash flow over the life, because they're getting a  
4 higher coupon.

5 Having said that, what you as an U.S. investor gains  
6 by having them take that bond, assuming you are a taxpayer --  
7 so assume you are a taxpayer in the 35 percent tax bracket.  
8 Clearly, if you're a taxpayer who pays state and local taxes,  
9 you're higher than that, but in a 35 percent tax bracket, you,  
10 as an U.S. holder, mainland holder of these bonds, for the 49  
11 million in bonds that the local on-island holders took taxable  
12 instead of you, you have a 14 percent after-tax gain. That is  
13 what was provided to you by giving the on-island investors the  
14 right to elect taxable bonds, which meant that your portfolio  
15 would have a higher amount of tax exempt bonds.

16 Q. Am I correct that one way to avoid an issue of whether  
17 one is preferencing one group of investors over another would  
18 be to simply wait until you get the IRS determination, and if  
19 all bonds can be tax exempt, everyone would get the same?

20 A. So let me make a couple of quick points. First of all,  
21 the holders in Puerto Rico, as I just said, gave you a very  
22 significant gain on an after-tax basis, but most importantly,  
23 what I need to make sure you understand is there is no time in  
24 which the IRS is obligated to respond. What happened in  
25 COFINA, as you are aware --



1 (Sound played.)

2 A. -- is that the Federal Government closed, and, therefore,  
3 we didn't receive an answer from the IRS in time for  
4 consummation of the COFINA Plan. Because the IRS does not  
5 give you a timeframe in which you will receive an answer, it  
6 is not in anyone's interest to wait, because we could be  
7 waiting for a very long time before we get an answer, whether  
8 that answer is yes or no, from the IRS.

9 Q. Do you know whether an effort has been made to engage the  
10 IRS on the subject of timing to increase the possibility of  
11 having their determination before the effective date?

12 A. I know that the service has been told that we are under a  
13 time constraint and we'd appreciate a quick answer from them;  
14 but, again, look at what happened in *COFINA*. The Federal  
15 Government closed.

16 There are loads of things that could happen here,  
17 and, by the way, one that could happen would be that they say  
18 no, in which case you wouldn't want -- have not wanted to take  
19 advantage of local investors on island being willing to  
20 purchase taxable bonds, given that they don't pay Federal  
21 Income Taxes usually on their holdings of Puerto Rico bonds.

22 Q. Let me just take two questions, please, specific  
23 questions as to this.

24 A. Of course.

25 Q. If the IRS rules that all bonds can be tax exempt before

1 the effective date, will the Puerto Rico investors still get  
2 the higher five percent coupon and the single 2041 maturity?

3 A. I don't have an answer for that. I don't know.

4 Q. Let me quickly ask you about the CVIs.

5 THE COURT: So, Mr. Hein, is this your last topic,  
6 since you have gone past your time?

7 MR. HEIN: I apologize, Your Honor. I actually had  
8 several other topics. I guess I did bring the other witnesses  
9 in much less than my estimate, and with your indulgence, Your  
10 Honor, I'd like to try to complete the questions, if I may.

11 THE COURT: All right. You may proceed.

12 MR. HEIN: Thank you.

13 BY MR. HEIN:

14 Q. On the CVIs, you state that no single individual person  
15 can provide the requisite expert opinion and report, correct?

16 A. None of the consultants for the Oversight Board in that  
17 case, correct.

18 Q. And is there any issue with respect -- or any discussion  
19 of bringing in someone new who can cover the waterfront, or,  
20 alternatively, have an existing expert rely upon the work of  
21 others, do more work themselves to be in the position to  
22 render the necessary opinion?

23 A. Well, it's not simply rendering an opinion, but what I'd  
24 say to you is we've had numerous dialogues with both the  
25 government's counsel -- who will be the ones providing the

1 | opinions on the bonds, not the Board's counsel -- and the  
2 | Board's counsel, as well as AAFAF's counsel, in discussing  
3 | what the alternative mechanisms are to try and get to an  
4 | answer of yes. We will continue to use our reasonable best  
5 | efforts to try and find a yes answer.

6 |           As I think you're aware, there's only been one CVI  
7 | issued by a municipal government in the United States, and  
8 | that was not tax exempt. The question really is, is there a  
9 | reasonable expectation that the bonds will pay. That needs to  
10 | be determined in order for it to be deemed, first, debt, and  
11 | then potentially tax exempt.

12 | Q.    Thank you.

13 |           Let me turn to a different topic. I'm now referring  
14 | to the question of available information on the number of  
15 | individual holders of GOs or PBA who could qualify, based on  
16 | the level of their holdings, as retail investors. Is that  
17 | something that the Commonwealth or the Oversight Board or  
18 | their advisors know what the number of individuals who could  
19 | qualify as retail holders are in each class?

20 | A.    I don't know.

21 |           THE COURT: So, Mr. Hein, we are ten minutes past  
22 | where we were going to break for lunch, and so how much more  
23 | time do you have with your -- how many more additional topics  
24 | do you have?

25 |           MR. HEIN: I think I can complete in ten minutes. I

1 don't think these topics -- these are going to be topics that  
2 I think involve less explanation from the witness.

3 THE COURT: All right. I suspect there will be some  
4 redirect, so what we'll do is break now for the lunch break,  
5 and resume at ten past 2:00 New York time, which is ten  
6 past -- I'm sorry, ten past 2:00 San Juan time, which is ten  
7 past 1:00 New York time.

8 So, Mr. Firestein, did you want to say something?

9 MR. FIRESTEIN: The only thing, I just want to make  
10 sure that -- I want to not tread on issues that are things  
11 that are of concern to the Court. First of all, my redirect  
12 at current is probably 90 seconds, so if that influences the  
13 Court's decision as to directionally where to go, I just put  
14 that out there for the Court's consideration before I even get  
15 to what my second issue might be.

16 THE COURT: Why don't you tell me what the second  
17 issue is, if it also has to do with time.

18 MR. FIRESTEIN: The second issue is I don't know  
19 whether you're going to impose an admonition, Your Honor, as  
20 we've often seen. I don't want to tread to a place where we  
21 wouldn't otherwise tread, and I also don't want to have a foot  
22 fault on an issue that the Court might be thinking is simply  
23 assumed.

24 THE COURT: Am I being asked for an admonition, Mr.  
25 Hein?

1 MR. HEIN: I think, Your Honor, it would be  
2 appropriate that the counsel not speak with the witness during  
3 the break. That would be my request.

4 THE COURT: Well, I will instruct the witness not to  
5 discuss with counsel, or anyone else, any topics on which he  
6 has been or can reasonably be expected to be examined.

7 So, Mr. Firestein, does that --

8 MR. FIRESTEIN: That addresses the second issue, Your  
9 Honor. I don't know whether on the 90 second point, whether  
10 we'll still break for lunch or what you wish to do, but we're  
11 happy to accommodate.

12 THE COURT: All right. Well, on the 90 second -- I  
13 was thinking in terms of what all we have left in the day, but  
14 I suppose if it's ten minutes and 90 seconds, and  
15 Mr. Brownstein would be able to go about his happy way, even  
16 if the rest of us have to come back -- I see that's where  
17 you're going with the 90 seconds.

18 MR. FIRESTEIN: That is directionally where I'm  
19 going, and I will tell you, Your Honor, we have one further  
20 witness for whom there has been no designated  
21 cross-examination time.

22 THE COURT: Yes. Then there's one of the Retirees  
23 Committee.

24 MR. FIRESTEIN: Correct.

25 THE COURT: All right. We'll go for another 15

1 minutes, and see if we can finish up Mr. Brownstein, so that  
2 he can go on his happy way. Then I think we will take perhaps  
3 a shorter lunch break.

4 MR. FIRESTEIN: Thank you, Your Honor. That was my  
5 point.

6 THE COURT: Thank you.

7 MR. HEIN: Thank you, Your Honor. May I resume?

8 THE COURT: Yes, you may.

9 MR. HEIN: Thank you.

10 BY MR. HEIN:

11 Q. Mr. Brownstein, are you familiar with what are called  
12 separately managed accounts?

13 A. Yes.

14 Q. If an individual investor had a separate managed account  
15 arrangement with a broker or trust company or bank, and that  
16 individual investor had less than one million par of GO and  
17 PBA bonds, did that individual qualify as a retail investor,  
18 even though their bonds were managed and directed by the bank  
19 or trust company?

20 A. I don't know.

21 Q. Is there any current expectation that the new GO bonds  
22 will be rated by any of the major rating agencies?

23 A. That would be the responsibility of the government to  
24 determine, but I do not believe day one they will be rated.

25 Q. Has there been any analysis of how the market yields and

1 secondary trading of the new GO bonds are likely to compare  
2 with market yields on similar maturity or similarly structured  
3 but investment grade municipal bonds?

4 A. Not by Citi, so I don't know.

5 Q. Are you aware of any study or analysis of what portion of  
6 Puerto Rico's GO or PBA bonds had, at the time the bonds were  
7 issued up through 2012, been held by individual retail  
8 investors, either directly or through separately managed  
9 accounts?

10 A. I would not know that.

11 Q. Were you personally involved in the discussions or  
12 meetings, if any, in the mediation or settlement process  
13 concerning the issues involving tax exempt status?

14 A. Yes.

15 Q. And with respect to the discussions you were personally  
16 participating in and personally involved in -- and I want to  
17 focus you on what you personally know as opposed to what you  
18 were told by others -- were there individual retail investors  
19 who were part of those discussions, other than people that  
20 might be managers of the fund, but incidentally also have  
21 their own holdings?

22 MR. FIRESTEIN: Your Honor, before the witness  
23 answers that question, and I'm not going to object to that  
24 question, but I do want to make clear that we not cross over  
25 the line into things that were undertaken in mediation, but I

1 am not objecting to this particular question. I just merely  
2 raise this as an issue.

3 So I apologize for that, but I want to make sure that  
4 we are clear on the Board's direction here.

5 THE COURT: So, Mr. Hein, do you want to restate that  
6 question, which is not being -- I mean repeat the question,  
7 which is not being objected to?

8 MR. HEIN: Sure. Thank you.

9 BY MR. HEIN:

10 Q. I'm now focused on discussions that you were personally  
11 participating in on the subject of tax exempt status for the  
12 new bonds. Was there any individual investors, who could  
13 qualify as retail investors, who participated in those  
14 discussions, apart from someone who may have been a fund  
15 manager or acted with one of the funds and incidentally also  
16 was personally an investor?

17 A. Without in any way jeopardizing mediation privilege, what  
18 I will say is there was one investor who was serving as a  
19 fiduciary to what included retail investors.

20 Q. And can you identify that person?

21 A. I'm sorry. You froze, if you were about to ask a  
22 question.

23 Q. Can you identify that person?

24 A. No, I will not.

25 Q. And let me ask you, with respect to the topics of the



1 number of separate CUSIPs or securities that would be issued,  
2 was that something that was discussed in meetings or  
3 conversations as part of the settlement and mediation  
4 process?

5 MR. FIRESTEIN: Your Honor, that actually I think  
6 does invade the contents more particularly of the mediation,  
7 and I am obliged, to avoid any sense of waiver and to maintain  
8 an element of consistency, to object on those grounds.

9 THE COURT: The objection is sustained.

10 MR. HEIN: Your Honor, in that case, I have no  
11 further questions. Thank you very much.

12 BY MR. HEIN:

13 Q. Thank you, Mr. Brownstein.

14 A. Thank you.

15 THE COURT: Thank you, Mr. Hein.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Mr. Firestein.

18 MR. FIRESTEIN: Thank you, Your Honor. Let me try to  
19 hold to my 90 seconds.

20 REDIRECT EXAMINATION

21 BY MR. FIRESTEIN:

22 Q. Mr. Brownstein, do you recall Mr. Hein inquiring of you  
23 about the notion of potentially waiting for an IRS ruling  
24 before distributing the new GO bonds?

25 A. Yes.

1 Q. And do you recall your testimony in which you indicated  
2 that the IRS has no specific time by which it must render its  
3 decision in connection with the pending application?

4 A. Yes.

5 Q. Separate and apart from that, sir, are you aware of any  
6 conditions or terms that exist within the GO-PBA PSA that  
7 might dictate a need not to wait?

8 A. Well, there is -- we have two deadlines. First, we must  
9 have concluded that at delivery of the bonds -- it's not a  
10 deadline. We will deliver a minimum of 87 percent of the  
11 bonds on a tax exempt basis. That is a process that requires  
12 diligence. It's in the works. But most importantly, there  
13 are deadlines built into the PSA where the PSA creditors have  
14 the right to terminate. So --

15 Q. Go ahead, sir.

16 A. No. That's it.

17 Q. And what is the date that you have in mind relative to  
18 that later subject, if you can recall?

19 A. I believe it's January 15th.

20 Q. Okay. Does January 31st sound like a date that might be  
21 more consistent with that?

22 A. Sorry. Yes. That is the correct date. Apologies.

23 Q. Thank you.

24 MR. FIRESTEIN: No further questions, Your Honor.

25 Thank you.

1 THE COURT: Thank you.

2 Mr. Hein, anything further?

3 MR. HEIN: Yes. I'd like to just follow up briefly  
4 on that.

5 RECROSS-EXAMINATION

6 BY MR. HEIN:

7 Q. Mr. Brownstein, are you aware of anything that would  
8 prevent the PSA creditors from agreeing to extend the  
9 deadline, if that meant being able to have the bonds ruled tax  
10 exempt in their entirety or not before the actual issuance  
11 occurred?

12 MR. FIRESTEIN: Objection, Your Honor. Lacks  
13 foundation, calls for speculation.

14 THE COURT: Overruled. He can say whether he's aware  
15 or not.

16 THE WITNESS: I am not aware.

17 MR. HEIN: Thank you.

18 THE COURT: Nothing further, Mr. Hein?

19 MR. HEIN: Correct.

20 THE COURT: Anything further, Mr. Firestein?

21 MR. FIRESTEIN: No, Your Honor. Thank you very much  
22 for the indulgence.

23 THE COURT: Thank you.

24 Thank you, Mr. Brownstein.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Your testimony is concluded, and you are  
2 excused.

3 (At 1:05 PM, witness excused.)

4 THE COURT: So I just want to look at a time estimate  
5 for the remainder of our business today. I understand that we  
6 have a declaration to be tendered by the Oversight Board  
7 without cross-examination, and a declaration to be tendered by  
8 the Retiree Committee without cross-examination, a return to  
9 the stipulation, and admission of exhibits.

10 I was going to ask AAFAF about its policy issues  
11 statement. I see something was filed by AAFAF in the course  
12 of the morning that I haven't had a chance to read yet, so I  
13 suppose I need to know whether I should just read it or  
14 whether there's anything more that AAFAF would want to say.

15 Then, finally, if anyone has issues with respect to  
16 the Order that I filed this morning and intend to amend, I  
17 suppose I'd like to see a little show of hands on that, so  
18 that I can figure out whether we're here for another ten  
19 minutes or here for another half hour.

20 MR. FRIEDMAN: Your Honor.

21 THE COURT: Yes. Mr. Friedman.

22 MR. FRIEDMAN: It's Peter Friedman from O'Melveny &  
23 Myers on behalf of AAFAF.

24 No, Your Honor, we're not raising an objection to the  
25 Plan. We don't have an objection. We simply wanted the

1 government's position to be on the record, so we don't ask for  
2 any more of your time or to interpose an objection on the  
3 issue.

4 THE COURT: Thank you. You don't have any issues  
5 with respect to the argument schedule that I set up this  
6 morning?

7 MR. FRIEDMAN: I did have a question, Your Honor.  
8 The argument schedule makes sense obviously, and to the extent  
9 we have anything to say on those issues, we will ask the Board  
10 if they will permit us to speak, but will there be -- but is  
11 this in lieu of closing arguments, or are these the closing  
12 arguments in their entirety?

13 THE COURT: No. It is in advance of closing  
14 arguments, so this is intended to address particular legal  
15 issues, and then closing arguments, marshaling evidence, and,  
16 you know, bringing home points and all that would follow the  
17 legal arguments.

18 MR. FRIEDMAN: Thank you, Your Honor. Nothing  
19 further from AAFAF.

20 THE COURT: Thank you.

21 Mr. Hein has his hand up.

22 MR. HEIN: Yes, Your Honor. I just wanted to say  
23 that -- I just wanted to say that I apologize. I have not  
24 reviewed the Court's Order that was filed this morning. I  
25 looked at the docket late last night, and had not seen the

1 Order this morning. So that's just -- I'm just noting that.

2 THE COURT: All right. Thank you.

3 Ms. Miller has a hand up. You have to unmute,  
4 Ms. Miller. You still have to unmute, Ms. Miller.

5 MS. MILLER: Okay. All right. I think I'm  
6 unmuted.

7 THE COURT: You are unmuted.

8 MS. MILLER: Okay.

9 THE COURT: Good afternoon, Ms. Miller.

10 MS. MILLER: Apologies. Atara Miller from Milbank on  
11 behalf of Ambac, for the record.

12 Just briefly with respect to the Order, I noticed  
13 that it identified time allocations for debtors and then  
14 objectors. There may be certain discrete issues, like  
15 third-party releases or others, that I would expect supporting  
16 parties would want to be heard on. I just want to make sure  
17 that your Court's Order and allocation of time wasn't  
18 precluding hearing from third parties or supporters of the  
19 Plan as part of the debtors' time.

20 THE COURT: No. I did not mean to preclude that. So  
21 perhaps one should have said supporters and opponents, rather  
22 than debtor and objectors, but I did not mean to exclude  
23 supporters who wish to argue any of the points.

24 MS. MILLER: Thank you, Your Honor.

25 THE COURT: So I think that then we can return to

1 Mr. Rosen or Mr. Firestein for the proffer of the remainder of  
2 the Oversight Board's case.

3 MR. ROSEN: Yes, Your Honor. This is Brian Rosen.  
4 If we could just have Mr. Herriman join us in this room, it  
5 will take 30 seconds.

6 THE COURT: Very well.

7 MR. ROSEN: Just stay there. He's going to be in.  
8 Thanks.

9 Laura, can you get someone to close the door?

10 THE COURT: We can hear you.

11 MR. ROSEN: Sorry. Thank you, Judge.

12 MR. FIRESTEIN: I had tried to tell him.

13 MR. ROSEN: Your Honor, we do have Mr. Herriman in  
14 the room with me at this time. At this time, Your Honor, I  
15 would like to present the declarations of Mr. Jay Herriman.  
16 Like the others, Your Honor, we have submitted two  
17 declarations, an original declaration and an amended one, the  
18 amended one including any exhibit references. The original  
19 declaration, Your Honor, is at ECF no. 18732, and the amended  
20 declaration is at ECF no. 19054-03.

21 Your Honor, at this time, we would like to tender  
22 those declarations into evidence.

23 THE COURT: Raise your hand if there's any objection.

24 Seeing no hands, and there having been filed no  
25 objections, the declarations of Mr. Jay Herriman, which are at

1 18732 and 19054-03 on the ECF system are admitted in evidence.

2 (At 1:12 PM, the Herriman Declarations admitted into  
3 evidence.)

4 MR. ROSEN: Thank you very much, Your Honor.

5 I would like to note, as you said earlier, there has  
6 been no request for cross-examination of Mr. Herriman.

7 THE COURT: Thank you. I have no questions for  
8 Mr. Herriman.

9 So thank you, Mr. Herriman, for being prepared to  
10 testify today, and your testimonial experience in this hearing  
11 is concluded.

12 THE WITNESS: Thank you, Your Honor. I appreciate  
13 it.

14 (At 1:12 PM, witness excused.)

15 MR. ROSEN: Thank you, Your Honor.

16 With that, Your Honor, I think Ms. Steege would be  
17 next.

18 THE COURT: Well, first let me just ask a question.  
19 Yesterday, or some day earlier this week, we admitted all of  
20 the exhibits that I understand the Oversight Board intended to  
21 tender as such, and so does the Oversight Board rest on its  
22 principal case?

23 MR. FIRESTEIN: Yes, Your Honor. We've sought  
24 admission and have received admission for all of the exhibits,  
25 and we have presented all of the witnesses for whom we sought



1 to introduce evidence.

2 THE COURT: Thank you.

3 So now we'll turn to Ms. Steege.

4 MR. FIRESTEIN: Excuse me, Your Honor. One other  
5 thing. The only thing is, of course, we also seek to and no  
6 doubt intend to rely on the evidence that -- for which  
7 admission was sought and received by the Court by other  
8 parties, and that will also include some of the things that we  
9 discussed in the context of argument. But as far as our  
10 seeking admission of exhibits and testimonial evidence, we are  
11 complete.

12 THE COURT: Thank you.

13 So, Ms. Steege?

14 MS. STEEGE: Good afternoon, Your Honor. Catherine  
15 Steege on behalf of the Retiree Committee.

16 I believe that Professor Johnson is in the waiting  
17 room, and what we would like -- so he is available for  
18 questions for Your Honor, if you have any. We would tender  
19 docket 19014, which is his expert declaration. Attached to  
20 that is Retiree Committee Exhibit No. One, which is his expert  
21 report, and we would ask that that be admitted into evidence.

22 I'm not aware of any objections, or that anyone  
23 wishes to cross-examine Professor Johnson.

24 THE COURT: Thank you.

25 Would anyone who objects to this tendered evidence

1 raise your hand?

2           Seeing no hands, and no objections having been filed,  
3 the declaration at 19014, and Retiree Committee Exhibit No.  
4 One are admitted in evidence.

5           (At 1:14 PM, the Johnson Declaration and Retiree  
6 Committee Exhibit No. One admitted into evidence.)

7           THE COURT: The Court has no questions for Simon  
8 Johnson, and since he's in the waiting room, he can't hear me,  
9 so you can thank him for me for being prepared to appear.

10           MS. STEEGE: Thank you, Your Honor.

11           THE COURT: Thank you.

12           I don't believe -- well, anyway, are there any other  
13 parties who seek to tender declarations that we've not already  
14 dealt with?

15           Mr. Hein's declarations have been admitted subject to  
16 the Court's ruling on redactions, and so -- Mr. Firestein.

17           MR. FIRESTEIN: If I might, Your Honor --

18           THE COURT: Yes.

19           MR. FIRESTEIN: -- speak to that precise issue. I  
20 realize I didn't raise my hand. But the Court raised the  
21 issue, and I think we can salt this one away quickly.

22           THE COURT: That's fine. Mr. Hein has his hand  
23 raised, too, but we'll start with you, Mr. Firestein, since  
24 you're talking.

25           MR. FIRESTEIN: Very quickly, Your Honor, we did

1 engage with Mr. Hein on the redactions, and I believe, if I'm  
2 not mistaken, in this morning's informative motion that we  
3 filed, we attached the redacted versions of the two Mark  
4 Elliott Declarations consistent with the Court's rulings on  
5 that. And to the extent that Mr. Hein seeks to move to admit  
6 those redacted versions, consistent with the Court's rulings,  
7 into evidence, we would have no further objection to them  
8 being admitted.

9 THE COURT: Very good.

10 Mr. Hein.

11 MR. HEIN: Yes. I just really wanted, out of an  
12 excess of caution, to make sure that I don't have to do  
13 something further to get the exhibits I offered admitted into  
14 evidence. The Oversight Board attached the initial exhibit  
15 list, plus two supplemental lists from me, and if it's  
16 necessary for me to move those into evidence, I hereby move.  
17 But they're a part of the packet that you received from the  
18 Oversight Board.

19 In addition, if I need to do anything, I would move  
20 to admit the two redacted Elliott Declarations. And then,  
21 third, there is a declaration that I had listed on my list of  
22 declarations as part of my original October 22 Exhibit List,  
23 Witness List, and Identification of Previously Filed  
24 Declarations. And this was reiterated in the October 25  
25 Amended Exhibit List, Witness List, and Identification of

1 Previously Filed Declarations.

2 And then when Your Honor asked for annotated  
3 declarations to reflect trial exhibit numbers, I annotated it  
4 and refiled it. It's a declaration of mine. It's docket  
5 19047. And, again, I would like to offer that into evidence  
6 as well.

7 THE COURT: Mr. Firestein?

8 MR. FIRESTEIN: Yes, Your Honor. Thank you.

9 If he's referring to his declaration, the declaration  
10 of Mr. Hein, I believe that that's fine. I think it was  
11 referenced in his exhibit list, or however he chose to  
12 characterize it, and we did not raise any objections to that  
13 submission.

14 MR. HEIN: Thank you.

15 THE COURT: All right. So it is your declaration at  
16 19047 that you're tendering now. You mentioned one other one,  
17 or no?

18 MR. HEIN: The Elliott Declarations have been covered  
19 I think.

20 THE COURT: Yes. The Elliott Declarations have been  
21 covered.

22 So Mr. Natbony has his hand up.

23 MR. NATBONY: Thank you, Your Honor. I just wanted  
24 to make sure, because my notes were a little unclear, that the  
25 exhibits that were offered through the stipulation this

1 morning, for which there were no objections, have been  
2 actually entered as opposed to just deferred to later in the  
3 day.

4 THE COURT: They haven't been entered yet. I've been  
5 waiting to get to the stipulation and all of its attachments,  
6 but we've been having these colloquies, some of which are  
7 about elements of that stipulation.

8 So, Mr. Hein, to the extent you were wondering when  
9 your Elliott Declarations and other exhibits will be  
10 officially, fully, and finally admitted, it will be once I've  
11 confirmed that the joint stipulation covers everybody's  
12 position as to every exhibit and remaining declaration, and  
13 then I would admit them.

14 MR. NATBONY: Thank you for the clarification, Your  
15 Honor. I just wanted to make sure.

16 THE COURT: Very well. Thank you. It's always good  
17 to be careful.

18 So is there any other commentary or colloquy  
19 regarding the joint stipulation, which is at 19172, that was  
20 filed this morning, which appears to me to list every exhibit  
21 that has been tendered, with annotations as to whether the  
22 exhibit has been withdrawn, whether the parties intend for it  
23 to be admitted, and whether there are any limitations on the  
24 exhibit? So it seems to me it's meant to be a comprehensive  
25 catalog of everything, with clear annotations as to those that

1 the parties have agreed would be admitted.

2 Have I accurately characterized the stipulation,  
3 Mr. Firestein? You have to unmute, please.

4 MR. FIRESTEIN: Your Honor -- thank you, Your Honor.  
5 Michael Firestein of Proskauer on behalf of the Board.

6 About 95 percent correct. It's not a 100 percent  
7 catalog, because as I think was noted earlier, the Board's  
8 exhibits have already been admitted. I think it's referenced  
9 in the stipulation, but I'm not sure, that the exhibit list is  
10 attached to the back. But other than that, you are on  
11 point.

12 THE COURT: Very well. So since you've still got the  
13 microphone, would you move the stipulation and its attachments  
14 referenced -- and the underlying exhibits referenced into  
15 evidence?

16 MR. FIRESTEIN: Yes. I'd be happy to, Your Honor. I  
17 move the stipulation and its attachments into evidence. The  
18 one caveat is I don't know how it was resolved with respect to  
19 the exchange between the Monolines and DRA earlier today. If  
20 they were allowed in, then the stipulation in its entirety  
21 should come in, and I'll so move.

22 THE COURT: All right. I believe I allowed them in.  
23 So is there any objection to my granting the motion?

24 I see no hands. The stipulation and its attachments  
25 referencing exhibits -- I'm just getting a note here.

1                   So we are going to refer to this as Stipulation No.  
2 One. So Stipulation No. One, including the list of exhibits  
3 attached, and representing the admission status of the --  
4 those exhibits as reflected in Stipulation No. One, is itself  
5 admitted, and the referenced exhibits and declarations are  
6 admitted to the extent Stipulation No. One so provides.  
7 Stipulation No. One, again, can be found at ECF no. 19172. So  
8 I think I've covered the bases I need to cover with respect to  
9 that.

10                   Mr. Hein. Oh, also, Mr. Hein's declaration at 19047  
11 is admitted in evidence.

12                   (At 1:23 PM, Stipulation No. One, and the referenced  
13 exhibits and declarations, to the extent Stipulation No. One  
14 so provides, admitted into evidence.)

15                   (At 1:23 PM, the Hein Declaration admitted into  
16 evidence.)

17                   THE COURT: Mr. Hein's hand went down, so I think I  
18 did that housekeeping properly. So it seems to me then that  
19 all of the evidence intended to be offered by any party in  
20 this confirmation proceeding has been ruled upon and entered  
21 as appropriate. So any party in interest that does not intend  
22 at this point to rest on its entire case should have a  
23 representative raise the hand now.

24                   No hands have been raised, and so the Court  
25 understands that -- oh, I'm sorry. Suiza Dairy's counsel has

1 raised his hand.

2 Mr. Gonzalez, you have to unmute, please. You still  
3 have to unmute.

4 MR. GONZALEZ VALIENTE: Okay. I think I got it now.  
5 Thank you.

6 THE COURT: Yes.

7 MR. GONZALEZ VALIENTE: Yes. I just want to make  
8 sure that our exhibits will be admitted as part of the  
9 stipulation, and that obviously is an important part of our --  
10 of our case and presentation. And that's my only concern,  
11 question, or just to make sure that --

12 THE COURT: Are they included in the stipulation?

13 MR. GONZALEZ VALIENTE: -- I was -- yes, I understand  
14 that it was, Your Honor, that they were.

15 THE COURT: Yes. It is on page -- there are three  
16 exhibits listed on page 13 --

17 MR. GONZALEZ VALIENTE: Yes.

18 THE COURT: -- of Exhibit One to Stipulation No. One.  
19 So yes, they have been admitted.

20 MR. GONZALEZ VALIENTE: Thank you very much, Your  
21 Honor.

22 THE COURT: Thank you.

23 So all parties in interest have rested on their  
24 entire cases. All right. As I indicated, I filed the  
25 argument Order this morning. I will file an amended version



1 of that this afternoon that simply adds a deadline for the  
2 filing of any objections to the revised proposed findings of  
3 fact and conclusions of law.

4           Were there any other comments, questions, or requests  
5 with respect to the argument Order, which also includes a few  
6 other deadlines for filing certain pleadings?

7           MR. ROSEN: Your Honor, Brian Rosen.

8           THE COURT: Yes, Mr. Rosen.

9           MR. ROSEN: I just want to say that we will obviously  
10 comply with the Court's Order for the filing of the amended  
11 proposed -- or, excuse me, a revised proposed order and  
12 judgment with respect to confirmation. I know that there is  
13 another timeframe, I believe it's Monday, with respect to  
14 comments to that or objections to that.

15           To the extent necessary, Your Honor, we'll continue  
16 to discuss with parties, not only before and after, the filing  
17 of that, and to the extent necessary, we will obviously want  
18 to file something subsequent, to the extent we can resolve any  
19 additional comments to that proposed order.

20           THE COURT: Thank you. I know there have been a lot  
21 of discussions of changes, and moving targets have to come to  
22 rest at some point, so that I know what I'm being asked to  
23 rule on. So that is why I've imposed some deadlines, and some  
24 deadlines for coming forward with any remaining objections, so  
25 that there can be appropriate discussions or raising of issues

1 for the Court.

2 Mr. Hein has his hand up.

3 MR. ROSEN: We will file the most up-to-date one  
4 by --

5 THE COURT: By the deadline, yes?

6 MR. ROSEN: Yes.

7 THE COURT: Okay.

8 MR. ROSEN: Yes.

9 THE COURT: Thank you, Mr. Rosen.

10 Now, Mr. Hein.

11 MR. HEIN: I'm just -- I tried to call up and  
12 multi-task to look at the Order, and it looks like there's a  
13 deadline for parties objecting to the proposed -- revised  
14 proposed order Monday at noon, which creates a logistical  
15 issue given that there'll be argument as well. And I guess  
16 what I'll respectfully request is that the deadline be  
17 deferred to the end of the day, so there's some opportunity to  
18 make a filing after the day concludes on Monday.

19 THE COURT: That is a fair point, and so if there's  
20 no objection to that request -- I'm actually just looking for  
21 that, the right paragraph in this Order.

22 MR. ROSEN: I believe it's on the third page at the  
23 bottom, Your Honor, or perhaps the fourth at the top.

24 THE COURT: No, I don't think so. Just one minute.

25 MR. ROSEN: I don't have it here.

1                   THE COURT: Just bear with me. Oh, it's on page  
2 three, in numbered paragraph three. So I would change the  
3 12:00 Atlantic Standard Time deadline to 6:00 PM Atlantic  
4 Standard Time, which would be 5:00 PM New York time.

5                   Is that sufficient for you, Mr. Hein?

6                   MR. HEIN: I, you know, would hope so, depending on  
7 how long court goes on Monday. I guess I just, you know, will  
8 try to file as soon as possible after court is done on Monday.

9                   THE COURT: All right. Well, I'll state it as 7:00  
10 PM Atlantic Standard, and my understanding is that you are  
11 undertaking to file as quickly as you can. I recognize that,  
12 unlike many of the other parties here, you don't have somebody  
13 who might be working on it while you're doing your argument,  
14 and so I do understand the need. If you go a little beyond  
15 that, nothing terrible will happen.

16                   My effort in making an early deadline would be to  
17 provide as much time as possible for it to be understood  
18 whether and to what extent there are objections that may need  
19 to be addressed in discussions.

20                   MR. HEIN: And, Your Honor, if I may raise one other  
21 question. Again, I just scanned the Order quickly, just in  
22 the last few minutes, but I would assume that if one basically  
23 is just reiterating the same objections, at least in part,  
24 because there haven't been changes, that one can rely on what  
25 one has already filed?

1                   THE COURT: I think as clear a cross-reference as  
2 possible would be helpful to everyone, but in principle,  
3 yes.

4                   MR. HEIN: Thank you. Thank you, Your Honor.

5                   THE COURT: Thank you.

6                   So is there anyone else who wishes to speak to this  
7 issue?

8                   I see no hands, and no one's unmuted, so the amended  
9 copy will have those two changes.

10                  This concludes the hearing Agenda for today. We will  
11 continue on Monday, beginning at 9:30 Atlantic Standard, which  
12 is 8:30 Eastern Standard -- I'm sorry. Mr. Rosen?

13                  MR. ROSEN: No, Your Honor.

14                  THE COURT: Okay. I thought I heard someone  
15 speaking.

16                  Monday we are starting at 8:30 Eastern Standard with  
17 oral argument on the legal issues enumerated in the Order that  
18 was filed and that will be amended. Counsel who've registered  
19 their e-mail addresses for this hearing pursuant to the  
20 Confirmation Hearing Procedures Order will already have  
21 received an invitation to register for Zoom access for Monday,  
22 Tuesday, and Wednesday.

23                  The deadline to register for Monday's hearing is  
24 Sunday, the 14th, by 5:00 Atlantic Standard Time. So if  
25 you'll want to be seen and heard, remember to do your

1 registration.

2 As always, I thank the court staff here in Puerto  
3 Rico, staff in New York, and in Boston for their work in  
4 connection with today's proceedings, and their outstanding  
5 ongoing work. With that, I say stay safe and keep well,  
6 everyone. I will see you from New York on Monday morning.

7 We are adjourned.

8 MR. ROSEN: Thank you.

9 (At 1:32 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT )  
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 142 pages is  
5 a true and accurate transcription to the best of my ability of  
6 the proceedings in this case before the Honorable United  
7 States District Court Judge Laura Taylor Swain, and the  
8 Honorable United States Magistrate Judge Judith Gail Dein on  
9 November 12, 2021.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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